

07-214651-FC



STATE OF MICHIGAN

IN THE DISTRICT COURT FOR THE COUNTY (   
 52ND DISTRICT 1ST DIVISIO..

PEOPLE OF THE STATE OF MICHIGAN,

RECEIVED FOR FILING  
-v- OAKLAND COUNTY CLERK

District Court Case No.:

06-007954-FY

'07 SEP 14 AIO :20

Circuit Court Case No. :

BY:   
 STEVEN LINDSBY MCBURNEY,   
 DEFENDANT/

PRELIMINARY EXAMINATION  
VOLUME I

BEFORE HONORABLE BRIAN MACKENZIE, DISTRICT JUDGE, P24097

NOVI, MICHIGAN

April 27, 2007

APPEARANCES:  
FOR THE PEOPLE:

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ORIGINAL

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1 NOVI, MICHIGAN

2  
3 Friday, April 27, 2007 at about 10:08

4 a.m.

5  
6 (The Court, counsel, and all parties  
7 present.)

8 THE COURT: Calling the matter of  
9 People versus Steven McBurney. That would  
10 be 06-7954. Put your appearances on the  
11 record.

12 MR. SKRZYNSKI: Good morning Your Honor,  
13 my name is John Skrzynski, I am here for the  
14 Prosecutor.

15 MS. SARA POPE-STARNES: Sara  
16 Pope-Starnes, Assistant Prosecuting Attorney.

17 MR. WHITE: Robert White appearing on  
18 behalf of Mr. McBurney who is seated to my  
19 immediate left.

20 THE COURT: All right. Let's do some  
21 housekeeping matters. As I understand this,  
22 the Prosecution is going to have three  
23 witnesses today.

24 MR. SKRZYNSKI: Yes.

25 THE COURT: But, their fourth witness

1 is unavailable at this point.

2 MR. SKRZYNSKI: That's correct.

3 THE COURT: And they are going to be  
4 requesting an adjournment over Defense  
5 objections which I am inclined to grant.  
6 That occurred in the in-chambers conference.  
7 Are there any stipulations that we are going  
8 to place on the record before we start  
9 taking testimony?

10 MR. SKRZYNSKI: I don't believe so.

11 MR. WHITE: I don't think so, Judge.

12 THE COURT: All right, there is  
13 something that I have got to draw both sides  
14 attention to, so would you wander up here?  
15 (Bench conference held at 10:09 a.m., Court  
16 reconvened at 10:09 a.m.)

17 THE COURT: Okay, everybody ready?

18 MR. WHITE: Yes.

19 MR. SKRZYNSKI: Yes.

20 THE COURT: So, who is going to take  
21 control of that document or whatever it is?

22 MR. SKRZYNSKI: I think probably the  
23 Court; it's addressed to the Court.

24 THE COURT: Okay, it may well be, but  
25 I am not allowed to look at anything at this

1 point unless it comes up as a question of  
2 evidence or bond.

3 MR. SKRZYNSKI: Well, I will take custody  
4 of it and make a copy for Defense Counsel.

5 THE COURT: All right.

6 MR. SKRZYNSKI: We'll copy it.

7 THE COURT: Then let's place it all  
8 on the record. I received an envelope; I  
9 noticed an envelope in the file that had  
10 "confidential" written on it. I presumed,  
11 since it is in a 52nd District Court envelope  
12 that it was delivered to the staff unsealed,  
13 and that someone on my staff opened it. I  
14 myself have not reviewed it, I have no idea  
15 what the contents are. Having noticed a  
16 confidential document in the court file and  
17 not knowing what it is, I called counsel to  
18 the bench and provided it to the Prosecution  
19 and to Defense to review jointly. I still  
20 don't know what's in it. I have given it to  
21 the Prosecution. I understand they are  
22 going to make a copy of whatever it is and  
23 give it to defense, is that correct?

24 MR. SKRZYNSKI: That's correct, Your  
25 Honor. We will retain custody of the

1 original and give a copy to Mr. White.

2 MR. WHITE: Yes, that's correct.

3 THE COURT: All right.

4 MR. SKRZYNSKI: Thank you Judge.

5 THE COURT: Let's proceed.

6 MR. WHITE: I would like to sequester  
7 the balance of the prosecutor's witnesses.

8 THE COURT: All right. If you are  
9 going to be testifying in this case, other  
10 than the Officer in Charge of the case, if  
11 you will please step out of the courtroom  
12 until such time as you have been called to  
13 testify. Any other preliminary matters?

14 MR. WHITE: None Judge.

15 MR. SKRZYNSKI: The record should reflect  
16 only the first witness is present.

17 THE COURT: All right. Call your  
18 first witness.

19 MR. SKRZYNSKI: Heather McBurney.

20 THE COURT: Ma'am, if you would step  
21 into the witness stand, remain standing, and  
22 raise your right hand I would appreciate it.  
23 Do you solemnly swear or affirm the  
24 testimony you are about to give is the truth,  
25 the whole truth, and nothing but the truth?

1 THE WITNESS: I do.

2 THE COURT: Be seated please. I  
3 would like you to state your name for the  
4 record and then spell it.

5 THE WITNESS: Heather McBurney,  
6 H-e-a-t-h-e-r M-c-B-u-r-n-e-y.

7 THE COURT: Can everyone hear her?

8 MR. WHITE: Yes.

9 THE COURT: Okay. Ma'am, I am going  
10 to need you to pull that microphone a little  
11 bit closer to you. Not the chair. You  
12 could actually take it out if you want to  
13 hold it, if that would be easier for you.  
14 No, you don't have to play with that. You  
15 can actually just take it right out of the  
16 thing and hold it. And that way -- well  
17 let's do a little test.

18 THE WITNESS: Can you hear me now?

19 THE COURT: Can everyone hear her?

20 MR. SKRZYNSKI: I can.

21 THE COURT: Perfect. Let's do it  
22 that way. And, ma'am?

23 THE WITNESS: Uh-huh.

24 THE COURT: Welcome to my courtroom.

25 THE WITNESS: Thank you.

1 THE COURT: I know it's not easy.

2 THE WITNESS: Thanks.

3 THE COURT: Go ahead.

4 ^CHEATHER MCBURNEY

5 Called by the Prosecution at 10:13 a.m.,

6 sworn by the Court and testified.

7 ^CDIRECT EXAMINATION

8 BY MR. SKRZYNSKI:

9 Q Ma'am, do you know a person by the name of  
10 Steven McBurney?

11 A Yes, I do.

12 Q Is he in the courtroom today?

13 A Yes.

14 Q Can you just point at him and let us know  
15 what he is wearing so we know who you're  
16 talking about?

17 A He is wearing orange.

18 MR. SKRZYNSKI: Let the record reflect  
19 that the witness has identified --

20 THE COURT: So reflect.

21 MR. SKRZYNSKI: Thank you.

22 BY MR. SKRZYNSKI:

23 Q How do you know Mr. McBurney?

24 A He is my husband.

25 Q And how long have you been married, ma'am?



1 A I have been married for a little over two  
2 years.

3 Q Okay. When were you married, do you know the  
4 date?

5 A It's March 5th, 2005.

6 Q Okay. Did you have any children?

7 A Yes.

8 Q How many?

9 A One.

10 Q All right. What was the child's name?

11 A Madison McBurney.

12 Q Okay. Is that the child that died in this  
13 matter?

14 A Uh-huh. Yes.

15 Q Okay. What was the birth date of that child?

16 A 12/27/05.

17 Q Okay. Ma'am, I want to direct your attention  
18 to the date of November the 30th of this last  
19 year 2006. That was a Thursday, do you recall  
20 that date, ma'am?

21 A Yes, I do.

22 Q Okay. On that date, were you working?

23 A Yes.

24 Q Where were you working?

25 A I work at Hartland Healthcare Center in Ann

1 Arbor.

2 Q Okay. And where did you live at that time?

3 A In South Lyon.

4 Q What was the address?

5 A 311 Scott Street.

6 Q Did there come a time that day when you went  
7 to work?

8 A Yes.

9 Q What time was that?

10 A I left about six o'clock.

11 Q Okay. Who else was living at the house with  
12 you?

13 A Steve and Madison, Steve McBurney and Madison  
14 McBurney.

15 Q Okay. Was that it, just the three of you?

16 A Yes.

17 Q Okay. Now, on that day when you went to  
18 work, you said around six p.m.?

19 A Yes.

20 Q Okay. Was anybody home when you left?

21 A Yes, Steve and Madison.

22 Q Okay. Who was going to take care of Madison  
23 after you left that day?

24 A Steve was.

25 Q At this time, how old is Madison?

1 A Eleven months old.

2 Q Okay. Was there anyone else that was going  
3 to be present to take care of Madison?

4 A No.

5 Q Okay. Was this the normal course of business  
6 for the family?

7 A Yes, uh-huh.

8 Q You would go to work every day and Steven --

9 A I worked nights and he worked days.

10 Q Okay. So he -- did he work that day?

11 A No.

12 Q What condition had Madison been in during the  
13 course of that day?

14 A She was not feeling very well that morning.  
15 She had thrown up and was a little tired, a  
16 little clingy that morning, but she was back  
17 pretty much to her normal self I would say  
18 by the time I left. Maybe just a little  
19 tired still.

20 Q How did she appear to you when you left?

21 A She was fine. I went in and laid her down  
22 in her crib. She used to take a little  
23 power nap while I left for work so she  
24 didn't get upset when one of us left, so she  
25 was laying in her crib playing with a toy,

1 so.

2 Q So, she appeared to be normal to you?

3 A Yes.

4 Q Like she is every day?

5 A Uh-huh.

6 Q Or was; okay. Did you end up going to work,  
7 Ms. McBurney?

8 A Yes.

9 Q All right. Did there come a time when  
10 anything happened unusual in the course of  
11 that evening?

12 A Yes, I got a phone call.

13 Q About what time was that?

14 A Um --

15 Q Well, how soon after -- I'm sorry go ahead.

16 A It was close to seven. I don't know the  
17 exact time, but it was around that time.

18 Q All right. Who was calling you?

19 A Steve.

20 Q All right. Did he tell you -- why was he  
21 calling?

22 A He said that she had collapsed and the  
23 paramedics were there working on her.

24 Q Did he tell you anything else?

25 A He said for me to come home, but I knew that

1           they would be taking her to a hospital with  
2           the ambulance there. So, I had hung up and  
3           went out to my car and called him back to  
4           find out what hospital they were going to.

5       Q     And did you find out where they were going?

6       A     And he said that they were going to U of M  
7           Hospital.

8       Q     So, did you go there?

9       A     Yes.

10      Q     All right. When Steve talked to you on the  
11           phone, you said he said that Madison had  
12           collapsed?

13      A     Uh-huh.

14      Q     Did he say anything else about her condition?

15      A     No.

16      Q     Okay. So, you went to -- what -- you went  
17           to U of M Hospital?

18      A     Yes.

19      Q     Okay. What happens once you get there?

20      A     My boss drove me up there and we pulled in  
21           the parking lot just as the ambulance was  
22           getting there and they were taking her off  
23           the back of the ambulance.

24      Q     Okay. Did you see Steven there?

25      A     Yes.

1 Q Where was he?

2 A He was in the back of the ambulance with her.

3 Q Okay. Did you go to him?

4 A Yes, I went over to them.

5 Q What happened then?

6 A I pretty much was just seeing what kind of  
7 condition she was in and we walked in to the  
8 E.R. where they were going to, you know,  
9 take care of her.

10 Q Did Steven tell you what condition she was in?

11 A No, he -- when we got in there I asked what  
12 had happened and he told me that she had  
13 collapsed at home.

14 Q Now, Ms. McBurney, I want you to tell me when  
15 you leave for work -- when you usually left  
16 for work, did Madison act a certain way  
17 whenever you would leave?

18 A She was having a -- she was going through a  
19 little bit of a separation anxiety.

20 Q How would that manifest itself?

21 A Mostly she would just make noise, want me to  
22 come back in the room. She did that when I  
23 was at home alone with her, too. If I  
24 stepped in the kitchen, she would start  
25 making noise wanting me back in the room.

1 Q Okay. How long would that go on before she  
2 could be comforted?

3 A Usually, I mean, I never was away from her  
4 when I was at home alone. I don't know when  
5 I left how long she would fuss for.

6 Q Now, you said that when you left she was in  
7 the crib, she was playing with a toy?

8 A Uh-huh.

9 Q Okay. Now, I want you to -- we were talking  
10 about November the 30th, I want you to fast-  
11 forward a little bit to December the 2nd.

12 A Okay.

13 Q Had you still -- had you been at the hospital,  
14 did you stay there all day --

15 A Yes.

16 Q -- on the 30th?

17 A Yes.

18 Q And then all day on December the 1st?

19 A The only time I went home was to change out  
20 of my work clothes and get some stuff to  
21 come back to the hospital. I was probably  
22 gone two hours.

23 Q Did you do that on December the First?

24 A The next day, yes, that friday.

25 Q Okay. And then you came back?

1 A Yes.

2 Q You stayed overnight on the December the  
3 First?

4 A Yes.

5 Q I want to point out the early morning hours  
6 of December the 2nd to you.

7 A Uh-huh.

8 Q Do you remember that time?

9 A Yes.

10 Q Okay. You were -- where were you at that  
11 point, like early morning hours, say maybe two  
12 in the morning?

13 A It was about two, I am guessing about two.  
14 I don't know the exact time.

15 Q Where were you?

16 A I was in Madison's room.

17 Q Who was with you?

18 A Steve.

19 Q Okay. And Madison as well?

20 A Yes.

21 Q And what happened at that time?

22 A The nurse came in and just took me out of  
23 the room, said she needed to ask me  
24 something. And I came out of the room and  
25 she said that -- that the police --



1 MR. WHITE: Excuse me, I just want  
2 to object as to what the nurse said.

3 MR. SKRZYNSKI: Okay.

4 THE COURT: Sustained.

5 BY MR. SKRZYNSKI:

6 Q I mean, don't tell me what the nurse said.  
7 She told you something and then did you do  
8 something?

9 A She took me out of the room, yes.

10 Q And where did you go?

11 A And then she said that --

12 Q Well, don't tell me what she said, just tell  
13 me what you did, I'm sorry.

14 A She took me into the room where the police  
15 officers were.

16 Q Okay. What kind of a room was that?

17 A It was like a small conference room with a  
18 table and chairs.

19 Q Okay. How many Police Officers were there?

20 A Two.

21 Q Okay. Was it Detective Sederlund seated  
22 there, he was one of them?

23 A Yes.

24 Q And you saw Detective Sovik earlier?

25 A Yes.

1 Q Was he the other?

2 A Yes.

3 Q Okay. And at that point, what did they do?

4 A They asked me questions about Madison's  
5 condition and how she was doing, and I  
6 brought up you know some of her medical  
7 stuff and I was just trying to explain to  
8 them what I had known so far about her  
9 condition.

10 Q How long did they talk to you?

11 A I don't know how long I was in there.

12 Q How did they behave toward you?

13 A They -- they just talked to me like a -- you  
14 know like a conversation. They didn't raise  
15 their voice or anything like that, it was  
16 just back and forth talking.

17 Q Were they polite?

18 A Yeah.

19 Q How long of a conversation was it?

20 A I don't know how long I was in there.

21 Q Did there come a time when it was over and  
22 you left the room?

23 A Yes.

24 Q And where did you go when you left?

25 A I went back to Madison's room.

1 Q And what happened then?

2 A Then Steve was taken in the other room by  
3 the nurse, and taken to talk to them.

4 Q All right. Do you know, was there a time  
5 when you were sitting there alone with  
6 Madison after he left?

7 A Yes.

8 Q About how long did that last?

9 A I don't know. I didn't look at the clock.

10 Q Okay. Were you asked to come back in that  
11 conference room with the Detectives?

12 A Yes.

13 Q And when you went there who was there?

14 A The -- I think those cops were there.

15 Q Okay.

16 A And Steve was there.

17 Q Okay.

18 A Yeah, they were both there, both cops and  
19 Steve were there.

20 Q And what happened at that time?

21 A They --

22 MR. WHITE: You know what, I am  
23 going to lodge an objection at this point if  
24 we are going to get into this. If the  
25 Prosecutor intends to ask about the

1 statements of the accused then, as I  
2 indicated to you in chambers, I believe that  
3 there was a custodial interrogation that was  
4 going on. Mrs. McBurney was brought back  
5 into it, and the foundation has not been  
6 laid for -- either through this witness or  
7 any police witness to introduce his  
8 statements at this point. Because they  
9 brought in a third-party does not excuse  
10 lack of proper constitutional protection.  
11 That was not afforded to my client.

12 MR. SKRZYNSKI: Okay. I can do this a  
13 different -- we are going to present the  
14 officers, so I will just do this different.

15 THE COURT: All right.

16 BY MR. SKRZYNSKI:

17 Q All right. When you came back in, did you  
18 sit down somewhere?

19 A Yes.

20 Q Where?

21 A In one of the chairs --

22 Q Were you sitting next --

23 A I think one of the officers was sitting next  
24 to me, Steve was sitting on the other side.

25 Q Okay. Were you close to -- sitting close to

1 Steve?

2 A Yes.

3 Q Okay. Was there then a conversation --

4 MR. WHITE: I'm sorry, what did you  
5 just say? I didn't hear you.

6 MR. SKRZYNSKI: Was he sitting close to  
7 her.

8 MR. WHITE: Were you sitting close --  
9 I'm sorry. I'm sorry.

10 BY MR. SKRZYNSKI:

11 Q Now, following that, was there further  
12 conversation between the Police Officers and  
13 Steven?

14 A They --

15 Q You don't have to tell me what they said or  
16 what he said. I am just asking, was there a  
17 conversation between them?

18 A A statement, they only really --, not a full  
19 conversation.

20 Q Steve was doing the talking?

21 A Yeah, mostly.

22 Q Okay. How long did that last once Steve  
23 started talking while you were there?

24 A I don't -- I don't know.

25 Q Okay. Did there come a time when you left

1 the room?

2 A I don't --

3 Q You don't remember?

4 A I don't remember some of --

5 Q Okay. Okay. Let me ask you this, ma'am, did  
6 you ever leave the hospital with Madison?

7 A No.

8 Q Okay. Did she pass away at the hospital?

9 A Yes.

10 Q What -- do you remember what date that was?

11 A It was December 4th.

12 Q December the 4th, okay. Basically, at that  
13 time, did the doctors approach you about her  
14 condition?

15 A Yes.

16 Q And were you asked to make a decision of some  
17 kind?

18 A They said they would test to see if there  
19 was any brain activity left.

20 Q Okay. And what happened then?

21 A They told me no.

22 Q And then what?

23 A And then I had to just -- I made a decision  
24 to take her off the life support.

25 Q Okay. Do you know about what time of day

1 that was, do you remember?

2 A It was about eight o'clock at night.

3 MR. SKRZYNSKI: Okay. Okay. Thank you,  
4 ma'am. I don't have any further questions.

5 MR. WHITE: If you need a break, you  
6 can ask the Judge.

7 THE WITNESS: I'm okay.

8 ^CCROSS-EXAMINATION

9 BY MR. WHITE:

10 Q Heather, how old are you?

11 A Huh?

12 Q How old are you?

13 A I'm 34.

14 Q Okay. And did you attend college?

15 A Yes.

16 Q Okay. What college did you attend?

17 A Oakland Community College.

18 Q And did you receive a degree?

19 A Yes.

20 Q Okay. And do you have any specific  
21 professional license?

22 A I am a Registered Nurse.

23 Q And how long have you been a Registered Nurse?

24 A I have been a Registered Nurse for about  
25 going on nine years.

1 Q And since you became a registered nurse, have  
2 you held that position continuously?

3 A Yes.

4 Q And the type of work that you do in your R.N.  
5 capacity is what?

6 A Right now what kind of --

7 Q Yes, what kind of work?

8 A I work in a physical rehab short-term  
9 facility, it's a step down from the hospital.

10 Q Okay. And that's in Ann Arbor?

11 A Yes.

12 Q Okay. And at the time that Madison was born  
13 you worked in the same place?

14 A Yes.

15 Q Okay. And the time that you married Steve  
16 were you working in the same place?

17 A Yes.

18 Q Okay. And Madison was born by cesarean  
19 section?

20 A Yes.

21 Q Cesarean section, correct?

22 A Yes.

23 Q And why was that?

24 A She was breach.

25 Q Okay. And breach in what way?



1 A Her head was up high, feet were down low, and  
2 positioned to where she had to be delivered  
3 C-Section.

4 Q Okay. Had labor started at that point?

5 A No.

6 Q Was this the anticipated delivery date, 12/27?

7 A Yes.

8 Q And the doctor who delivered her?

9 A Doctor -- her regular doctor was Dr. Dino  
10 Davidou (sp), but the doctor that was there  
11 for the hospital that day was Dr. Brandeman.

12 Q Okay. And she was delivered at St. Joseph's  
13 Mercy Hospital in Ann Arbor, correct?

14 A Yes.

15 Q Okay. And she had a condition when she was  
16 born, correct?

17 A Yes.

18 Q And tell the Judge what that condition was.

19 A She was born with hip dysplasia. Her hips  
20 were dislocated when she was born and -- but  
21 she wasn't -- they thought that her hips  
22 were okay, because they didn't have a click,  
23 but she was diagnosed in April with the  
24 definite hip dysplasia.

25 Q And were you given any explanation of how

1 that happened, was it during the birth?

2 A No.

3 Q Was it congenital?

4 A It's just a congenital condition.

5 Q Other than that, Heather, were there any other  
6 complications in the birth of Madison?

7 A She was born with some open spots on the  
8 back of her head that she was later  
9 diagnosed with the Aplasia Cutis Congenita.

10 Q Okay. And open spots?

11 A Yes.

12 Q How many open spots were there?

13 A There were three.

14 Q Okay. And when you say "open spots", could  
15 you explain to the Court how you would say  
16 that they were open?

17 A Pretty much it looks like if you were to --  
18 like skin your knee.

19 Q Okay.

20 A You know, the top layers of skin pretty  
21 much, you know, the superficial open areas,  
22 no bleeding or anything, not deep enough to  
23 bleed.

24 Q All right. Anything else, any other kind of  
25 unusual things about Madison's birth other

1 than hip dysplasia and the spots on her head?

2 A I don't -- not that I can remember.

3 Q And you were discharged from the hospital on  
4 December 30th?

5 A It was December 30th or the 31st, one of  
6 those dates.

7 Q And you went home?

8 A Yes.

9 Q To 311 Scott in South Lyon?

10 A Yes.

11 Q And where you lived with Steve?

12 A Yes.

13 Q And how long were you off work, Heather?

14 A I went back to work in February.

15 Q Okay. And February -- so you were off  
16 approximately four to six weeks?

17 A Six weeks.

18 Q Okay. And when you went back to work, what  
19 was the child care arrangements for Madison?

20 A I went back to work working midnights and  
21 Steve worked days. He was still on  
22 unemployment at the time, but I was starting  
23 to work evenings at that time and going to  
24 eventually work to midnights because it's --

25 Q Okay.

1 A -- they were giving me the opportunity to  
2 get used to working midnights.

3 Q So, when you worked midnights, Steve would be  
4 at home with Madison?

5 A Yes.

6 Q And then he would go to work, or when he  
7 returned to work, you would be at home with  
8 Madison?

9 A Yes.

10 Q And then you were the two care-givers for  
11 your daughter then?

12 A Yes.

13 Q And her pediatrician, who was she treated by?

14 A Dr. Adams, Robert Adams.

15 Q And did you take her to all of her well-visit  
16 check-ups?

17 A Yes.

18 Q Okay. And my notes indicate this -- and  
19 please -- January 24th, January 31st, March  
20 17th, May 17th, July 24th and October 24th,  
21 those were normal well-visit check-ups for  
22 Madison?

23 A Uh-huh. Yes.

24 Q Anything unusual, any findings during those  
25 periods of time?

1 A No.

2 Q Okay. And, in fact, on October 24th she had

3 a series of lab tests done, correct?

4 A Yes.

5 Q Okay. And they all came back normal?

6 A Yes.

7 Q Okay. On February 16th, did anything unusual

8 happen that day?

9 A I believe that's the day that -- that I was

10 at work and Steve had -- was carrying Madison

11 in the chair and tripped and fell with her.

12 Q Okay. He called you at work?

13 A Yes.

14 Q Okay. And he said that he was carrying

15 Madison in her, what you guys called her,

16 bouncy chair?

17 A Yes.

18 Q And that as he was going into the computer

19 room --

20 A Yes.

21 Q -- he lifted the chair up, tripped, and she

22 fell out?

23 A Yes.

24 Q And fell on the floor?

25 A Yes.

1 Q And hit her head, is that true?  
2 A Yes.  
3 Q And he asked you what should be done,  
4 correct?  
5 A Yes.  
6 Q And you both agreed that she should be taken  
7 to St. Joseph's Mercy Hospital, correct?  
8 A Yes.  
9 Q And he drove her to your work?  
10 A Yes.  
11 Q And from your work you went to the hospital,  
12 correct?  
13 A Yes.  
14 Q And there was -- Madison was seen through  
15 emergency?  
16 A Yes.  
17 Q Okay. And she was examined?  
18 A Uh-huh.  
19 Q And there was no finding of any abnormality  
20 at that point?  
21 A No.  
22 Q Okay. There was no x-rays done?  
23 A No.  
24 Q No M.R.I. or CAT Scan that you can recall?  
25 A No.

1 Q Okay. And after seeing the doctor and  
2 talking to the doctor she was released to  
3 you and Steve to go home, correct?

4 A Yes.

5 Q Now, the hip dysplasia actually wasn't  
6 diagnosed until Dr. Craig of the U of M  
7 Hospital, correct?

8 A Actually, she was diagnosed at St. Joe's.

9 Q That's correct.

10 A She had an ultrasound there.

11 Q Okay. Okay. And then she started treating  
12 with Dr. Craig?

13 A Yes.

14 Q And Doctor Craig treated her, and again let  
15 me -- she saw Doctor Craig April 20th, May  
16 4th, June 8th, July 6th, September 12th and  
17 November 14th, does that appear to be a fair  
18 recollection of the times that she treated  
19 with Doctor Craig for her hips?

20 A Yes.

21 Q And, initially, she had a pavlack harness,  
22 correct?

23 A Pavlack harness.

24 Q And then she went to a Hewitt Brace, correct?

25 A Uh-huh.

1 Q Is that true?

2 A Yes.

3 Q Okay. And the brace was -- she wore initially  
4 24 hours, correct?

5 A The harness she wore for 24 hours at first.

6 Q Okay.

7 A And was gradually weaned down and when she  
8 got older she had to be moved to the brace  
9 because --

10 Q And the brace was approximately -- when was  
11 it that Madison started wearing that?

12 A I don't know exact -- she had been in it for  
13 a few months.

14 Q Okay. And she had an x-ray with Doctor Craig  
15 on July 6th of 2006?

16 A At six months I believe is when they told me  
17 she was old enough to start getting x-rays.

18 Q Okay. And to your knowledge, what part of  
19 her was she x-rayed; what did she have  
20 x-rayed?

21 A The pictures of the x-ray I could see from  
22 she was put in like a frog position.

23 Q Okay.

24 A I could see from about where her belly-button  
25 would be all the way down her legs.



1 Q Okay. Were there any x-rays of her upper  
2 body and skull during this period of time  
3 that she was being treated by Doctor Craig?

4 A No.

5 Q Okay. Now, the last appointment you had with  
6 Doctor Craig was on November 14th, correct?

7 A Uh-huh.

8 Q And I think -- is that true?

9 A Yes.

10 Q Okay.

11 A Sorry.

12 Q And I believe the advice was to come back in  
13 three months, correct?

14 A Yes.

15 Q Okay. And did she continue to wear the  
16 Hewitt brace, correct?

17 A Yes.

18 Q Okay. Now, the condition that you referred  
19 to before that she was born with the Aplasia  
20 Cutis Congenita?

21 A Yes.

22 Q Will you explain to the Court what that is,  
23 what your understanding of it is?

24 MR. SKRZYNSKI: Well, Judge I have to  
25 object. I don't think that this witness is

1 competent to say that. What she is going to  
2 say is going to be hearsay.

3 MR. WHITE: She is an R.N. Judge.

4 THE COURT: So. Do you want to  
5 establish the foundation for her expertise in  
6 this area? She is not testifying as a  
7 expert, Counsel.

8 MR. WHITE: She is not testifying as  
9 an expert, she is testifying as --

10 THE COURT: And if she hasn't done the  
11 examination herself --

12 MR. WHITE: She is testifying as a  
13 mother and what information she has --

14 THE COURT: Approach the bench.  
15 (Bench conference held)

16 THE COURT: Are you okay, ma'am?

17 THE WITNESS: Uh-huh.

18 THE COURT: All right, let's go.

19 Objection is sustained unless you lay a  
20 foundation for her expertise in the area that  
21 you're asking her about.

22 BY MR. WHITE:

23 Q The Aplasia Cutis Congenita, that was a  
24 diagnosis for the spots that she had on her  
25 when she was born?

1 A Yes.

2 Q Those spots continued to remain from the time  
3 of birth, correct, up to the time that she  
4 was admitted to the hospital?

5 A Two of them healed, one never closed.

6 Q One never closed?

7 A Yes.

8 Q Okay. And who did you seek treatment from?

9 A I went to, I believe, it was Dr. Pyro at  
10 first.

11 Q Okay.

12 A A dermatologist; and he referred her to U of  
13 M.

14 Q Okay. And would you have seen Dr. Pyro on  
15 June 1st, does that sound --

16 A That sounds about the right time.

17 Q Okay. And would you have seen -- did you go  
18 to U of M on June 28th for the treatment of  
19 the skin condition?

20 A Yes. Yes.

21 Q Okay. And is any treatment that was  
22 prescribed, treatment that was rendered to  
23 Madison for this skin condition, was what?

24 A They -- I was told to just -- that it would  
25 heal up from the U of M doctors and that

1           they wanted me to follow-up with an M.R.I.  
2           for her.

3       Q     Was she given any medications?

4       A     No.

5       Q     Okay. And an M.R.I. was done through U of M,  
6           correct?

7       A     Yes.

8       Q     On August 31st, 2006, correct?

9       A     Yes.

10      Q     And then, subsequently, there was a CAT Scan  
11           done also of her head?

12      A     Yes.

13      Q     On September 11th through U of M?

14      A     Yes.

15      Q     Is that true?

16      A     Yes.

17      Q     Okay. Now, the last treatment that she  
18           received for this -- or a connection with this  
19           condition, though, would have been the CAT  
20           Scan of September 11th?

21      A     The wound was still not healing, so I went  
22           out of network to another dermatologist.

23      Q     And why would you go out of network?

24      A     Because I was concerned that that wound was  
25           still open.

1 Q And who did you see? Would it have been Dr.  
2 Lipkin?

3 A Yes.

4 Q Okay. Would it have been October 30th?

5 A Yes, they had done a culture.

6 Q Okay. So, they did a culture that day?

7 A Yes.

8 Q And you actually came back on November 14th?

9 A Yes, two weeks later.

10 Q Two weeks later you were informed that she  
11 had a bacterial infection, correct?

12 A Yes.

13 MR. SKRZYNSKI: Judge, that's hearsay  
14 too. I mean, the diagnosis of her condition,  
15 that's got to be done by a doctor. It's  
16 hearsay as to this witness.

17 BY MR. WHITE:

18 Q Your understanding of the condition that she  
19 had --

20 THE COURT: Well, response? Or are  
21 you just going to move to a different  
22 question?

23 MR. WHITE: My question was her  
24 understanding. I am not asking her to tell  
25 me what the doctor said.

1 THE COURT: His objection, I think,  
2 goes to hearsay information as a foundational  
3 basis.

4 MR. WHITE: That's not what I asked  
5 her.

6 THE COURT: And if that issue is  
7 relying on hearsay as opposed to her own  
8 knowledge, then she can't answer the  
9 question. So, lay your foundation that she  
10 actually can talk to this from her own  
11 knowledge as opposed to -- objection  
12 sustained on a foundation basis. If you can  
13 lay a foundation, I will allow it.

14 BY MR. WHITE:

15 Q She had a culture taken on October 30th,  
16 correct?

17 A Yes.

18 Q Okay. And you had a return visit on  
19 November 14th, correct?

20 A Yes.

21 Q Okay. And who was present during this return  
22 visit?

23 A I was returning to Dr. Lipkin, it was just  
24 Madison and I.

25 Q Okay. And were you informed by the doctor --

1 don't tell me what the doctor said, but were  
2 you informed the doctor's results of his  
3 investigation to the culture and the reasons  
4 why this sore was still open on her head?

5 A Yes.

6 Q All right. And did he prescribe any specific  
7 treatment?

8 A Yes.

9 Q Okay. And what was the treatment?

10 A She was prescribed Bactroban Ointment and to  
11 use a solution on her head, I believe it's  
12 called Domeboro Solution.

13 Q Okay.

14 A I think I was doing that three times a day  
15 to her.

16 Q Okay. And, as a result of this conference  
17 with the doctor and the prescription, did  
18 you remove -- at this point, excuse me, let  
19 me back up. Madison had started day-care, is  
20 that true, October 18th, correct?

21 A Yes.

22 Q And it was at Pitter Patter?

23 A Uh-huh.

24 Q Is that true?

25 A Uh-huh.

1 Q You have to say yes or no, I'm sorry.

2 A Yes.

3 Q I'm sorry. And she had started day-care on  
4 October 18th?

5 A Yes.

6 Q And the time period that she was in day-care  
7 was when; when was the actual time of day?

8 A She was taken there about seven in the  
9 morning and I picked her up about two  
10 o'clock in the afternoon.

11 Q And who would take her at seven o'clock?

12 A Steve would take her in the morning.

13 Q And then he would go to work?

14 A Yes.

15 Q Okay. And then you would pick her up in the  
16 afternoon?

17 A Yes.

18 Q Okay. And this was the first child care that  
19 Madison ever had outside you and Steve?

20 A Yes.

21 Q When, on a regular working -- normal working  
22 day basis, correct?

23 A Yes.

24 Q So, you must have been then changed to the  
25 morning -- excuse me, working the day shift?



1 A Yes.

2 Q And Steve is working the day shift?

3 A Yes.

4 Q And she was removed from child care on that

5 date, on November 14th, the same day?

6 A Yes.

7 Q Okay. And she returned to see Dr. Lipkin on

8 November 28th?

9 A Yes.

10 Q Okay. For treatment of the condition --

11 A Uh-huh.

12 Q -- that was diagnosed, correct?

13 A Yes.

14 Q Okay. And on November 28th -- excuse me, at

15 any time, Heather, did Dr. Lipkin have any x-

16 rays or CAT Scans or M.R.I.s done --

17 A No.

18 Q -- on Madison?

19 A No.

20 Q Okay. The type of examination that he was

21 doing during these three visits, October 30th,

22 November 14th and November 28th, what would he

23 do?

24 A He would physically look at the wound on her

25 head to see how the wound was doing.

1 Q Okay. And then after October 28th you were  
2 supposed to make an appointment with an  
3 Infectious Disease --

4 A Yes.

5 Q -- doctor, is that correct?

6 A Yes.

7 Q After November 28th, after the last  
8 appointment, you were supposed to make an  
9 appointment with Infectious Disease doctor, is  
10 that true?

11 A He had already had one made.

12 Q Okay. And which doctor was that, do you  
13 recall which office?

14 A That was another Doctor Craig.

15 Q All right. On October 27th she had her first  
16 cold, she was -- you took her to the doctor  
17 for her first cold?

18 A Uh-huh.

19 Q You took her to Dr. Adams?

20 A Yes.

21 Q Okay. And that was not a normal well-visit,  
22 isn't it true?

23 A Right, yes.

24 Q That was something that you took her to --

25 A Yes.

1 Q -- because she had congestion, runny nose, all  
2 the symptoms of a child having a cold?

3 A Yes. Yes.

4 Q And she was prescribed Tylenol, Tylenol Cold  
5 and Cough, is that true?

6 A Yes. Yes.

7 Q And she was having fevers, isn't that --  
8 about that time too, also?

9 A Yes.

10 Q And after four or five days it didn't clear  
11 up, did it?

12 A No.

13 Q And Steve took her back on November 3rd?

14 A Yes.

15 Q Okay. And she was prescribed Amoxicillin?

16 A Yes.

17 Q Okay. And you and Steve administered the  
18 Amoxicillin?

19 A Yes.

20 Q All right. How -- did she continue to have  
21 fevers at that point, Heather, after Steve  
22 took her back to Dr. Adams?

23 A For a few days.

24 Q For a few days?

25 A Yes.

1 Q And there was some indication that she might  
2 have had an ear infection also?

3 A He prescribed the Amoxicillin when he looked  
4 into her ears, he said that there was a  
5 possible small ear infection.

6 Q Did her cough and cold resolve itself to your  
7 satisfaction after November 3rd?

8 A Yeah, eventually it went away, yeah.

9 Q Did it clear up?

10 A Yeah.

11 Q Do you have any idea how long after November  
12 3rd, Heather?

13 A No.

14 Q No?

15 A No.

16 Q Was she still showing any effects as of on  
17 November 30th before you went to work?

18 A No.

19 Q Okay. So, that if I am correct then, the  
20 only times that doctor -- that the only time  
21 that Madison saw a doctor out of a normal  
22 routine check-up or treatment is on February  
23 16th when she went to St. Joe's as a result  
24 of falling out of the bouncy chair?

25 A Yes.

1 Q And then the two appointments in October for  
2 the treatment of the cough and the fevers?

3 A Yes.

4 Q Okay. Now, on November 30th she is out of  
5 day care, correct?

6 A Yes.

7 Q And the program at that point was you had  
8 gone back to midnights?

9 A Yes.

10 Q Okay. And what time would you normally leave  
11 the house?

12 A I usually left the house at six-thirty.

13 Q And Steve was working during the day?

14 A Yes.

15 Q And then Steve would provide the care for  
16 Madison?

17 A Yes.

18 Q And then when he would go to work in the  
19 morning you would get up and care for her?

20 A Yes.

21 Q The day of November 30th, Steve didn't work,  
22 did he?

23 A No.

24 Q He worked -- in fact you had a sewer problem,  
25 correct?

1 A Yes.

2 Q And he was around the house that day,

3 correct?

4 A Yes.

5 Q You had gotten home at approximately four a.m.

6 in the morning?

7 A Yes.

8 Q Checked on Madison; she seemed fine?

9 A Yes.

10 Q And then Steve got up before she did and went

11 outside and started working on the sewer,

12 correct?

13 A Yes.

14 Q And then you got up and started caring for

15 Madison approximately seven o'clock that

16 morning?

17 A Yes.

18 Q Okay. Now, I believe according to the

19 Prosecutor's questioning you had said that

20 Madison seemed just a little off that day?

21 A Yes.

22 Q Okay. Normal time getting up seven o'clock?

23 A Yes.

24 Q Okay. And when you went in to get her from

25 her bed, she had her harness on, correct?

1 A Yes.

2 Q She slept with it on?

3 A Yes.

4 MR. WHITE: If I may approach the  
5 witness, Your Honor, I actually want to  
6 approach the court reporter?

7 THE COURT: You may.

8 BY MR. WHITE:

9 Q Heather, I am going to show you Proposed  
10 Exhibit A. And I know this is difficult.  
11 (Defense Proposed Exhibit A, Photograph of  
12 Madison's Crib, introduced at 10:53 a.m.)

13 A Okay.

14 Q Is that a picture of Madison's crib?

15 A Yes.

16 Q Madison had her own room?

17 A Yes.

18 Q Does that accurately depict the condition of  
19 the crib and its' placement in the room as  
20 of November 30th, 2006?

21 A Yes.

22 MR. WHITE: I would move for entry  
23 of the Exhibit.

24 MR. SKRZYNSKI: No objection.

25 THE COURT: Received.

1 (Defendant's Exhibit A, Photograph of  
2 Madison's Crib, received and admitted into  
3 evidence at 10:54 a.m.)

4 BY MR. WHITE:

5 Q Now, when you went in to get her that  
6 morning you noticed something unusual, did  
7 she have a little vomit on her?

8 A It was a little dried spit-up on her --

9 Q Okay.

10 A -- cheek and a little bit on her sleeper.

11 Q Okay. Was this something that was unusual?

12 A Yes.

13 Q Okay. Did she -- did she vomit very often,  
14 was she subject to spitting up her bottle or  
15 --

16 A She spit up a lot when she was younger, but  
17 not at that age she didn't.

18 Q Okay. And did you notice anything about her  
19 stomach?

20 A Yeah, her stomach was rumbling, making a lot  
21 of noise when I got her up.

22 Q And you got her out of her bed?

23 A Yes.

24 Q Got her her bottle?

25 A Yes.



1 Q She took her bottle, and then you were  
2 playing with her and she fell asleep on you?

3 A Yes.

4 Q Okay. And that would have been approximately  
5 nine, nine-thirty?

6 A That sounds right, yes.

7 Q Okay. And was this unusual for her to nap at  
8 this point?

9 A Yes. Usually it was later.

10 Q And later being?

11 A About eleven; I would say close to eleven.

12 Q Okay. And Steve was still outside working on  
13 the sewer?

14 A Yes.

15 Q In fact, he had another gentleman that came  
16 over and was helping him, correct?

17 A Yes.

18 Q Okay. And you and Madison napped on the couch  
19 in the front room?

20 A Yes.

21 Q Okay. And, at this point, did you form a  
22 belief that she was not feeling well?

23 A Yes.

24 Q Okay. And when she got up you took her to  
25 the bath; took her to her bath?

1 A Yes.

2 Q Okay. Did anything unusual happen in her

3 bath?

4 A When I was getting her undressed that's when

5 she had vomited.

6 Q Okay. Was it vomiting that you thought was

7 unusual under these circumstances?

8 A It was quite a bit; pretty forceful. I was

9 also sitting her up at the same time that

10 she vomited, but she -- that was the first

11 time that I had ever seen her to vomit --

12 Q And with that level of force?

13 A Yes.

14 Q Okay. Would you call it projectile vomiting?

15 A I can't say for sure.

16 Q Okay.

17 A Because it could have been also the -- as I

18 was sitting her up being part of that, too.

19 Q Okay. Okay. And the content, was it the

20 bottle from this morning?

21 A The bottle and apple sauce that she had

22 gotten that morning.

23 Q Okay. Anything else unusual that you noticed

24 about her that day, about the way she was

25 acting?

1 A She was a little -- little more laid back I  
2 guess is the way -- she still played with her  
3 toys, still ate. I kept her, you know, her  
4 food bland that day because of the vomiting,  
5 but she ate all of her food. She just  
6 seemed a little more not as wild playing I  
7 guess.

8 Q Okay. Did she vomit again?

9 A A little bit. It was more like a big  
10 spit-up, it wasn't a -- you know.

11 Q And that was approximately when?

12 A Probably an hour after her bath.

13 Q Okay. So, then there would have been three  
14 -- three times or three periods of vomiting,  
15 one she had already done it when you woke  
16 her up, when she was awake, excuse me, one  
17 in the bath tub where you were getting her  
18 ready for her bath, and then approximately  
19 an hour after her bath?

20 A About an hour; yeah.

21 Q Did she act in any way to indicate that her  
22 head or neck were hurting?

23 A She seemed whiny when I would lay her back  
24 to change her diaper. It's hard to say if,  
25 you know, if something wasn't comfortable,

1 she kind of would pout out her lip, as soon  
2 as she laid down she would stop. I don't  
3 know, she was just kind of fussy, if it was  
4 her stomach bothering her.-

5 Q Did -- was Madison prone to temper tantrums?

6 A No.

7 Q Did she -- would you ever characterize as in  
8 Madison's crying ever to the level of  
9 screaming?

10 A One time when she had real bad gas pain.

11 Q Okay. Approximately when was that?

12 A She was about three months old.

13 Q Okay. Other than that time, would you have  
14 ever characterized her crying or being upset  
15 as screaming?

16 A No.

17 Q Now, by the time you were ready to go to  
18 work, you felt that she was her normal self?

19 A Yes.

20 Q And her normal self was what?

21 A Laying on the floor, she was playing with me  
22 on the floor, smiling. She was eating fine.

23 Q Did you see Steve with Madison that day; did  
24 Steve have any interaction with her that day?

25 A A little bit.

1 THE COURT: Stop for a minute.  
2 Approach again.

3 MR. WHITE: I'm sorry.

4 (Bench conference held at 11:01 a.m.)

5 THE COURT: Continue.

6 BY MR. WHITE:

7 Q So, would you say her normal self is  
8 playing/smiling?

9 A Yes.

10 Q Okay. And would she nap when she would  
11 normally -- when you laid her down for a nap,  
12 would she normally fall asleep?

13 A Yes.

14 Q Okay. Any problems with getting her to sleep  
15 over the course of her life?

16 A Not for me, no.

17 Q All right. And now you talked about her  
18 separation anxiety?

19 A Yes.

20 Q Okay. That is when you would leave the room  
21 there would be some protest?

22 A Yes.

23 Q And that level of protest was what?

24 A Mostly she would just start making like a  
25 whiny noise.

1 Q Okay. It wasn't screaming, was it?

2 A No.

3 Q It was crying?

4 A No.

5 Q It wasn't a temper tantrum?

6 A No.

7 Q It was a noise?

8 A Yes.

9 Q Okay. And this is true if you left the room  
10 and in order to do this, to facilitate you  
11 leaving for work you and Steve would lay her  
12 down for what you would call a power nap?

13 A Yes.

14 Q Shortly before you would leave, correct?

15 A Yes.

16 Q And that power nap she would actually go to  
17 sleep?

18 A Sometimes. Sometimes she would just lay in  
19 there and play.

20 MR. WHITE: Okay. Excuse me one  
21 second, Your Honor.

22 THE COURT: Uh-huh.

23 MR. WHITE: I have nothing further of  
24 this witness.

25 THE COURT: Redirect?

1 MR. SKRZYNSKI: None, thank you.

2 THE COURT: You may step down. The  
3 Court is going to take a five minute recess.  
4 (The witness was excused at 11:04 a.m.)

5 MR. SKRZYNSKI: May this witness be  
6 excused, Your Honor?

7 THE COURT: She may.  
8 (The Court was in recess at 11:04 a.m., the  
9 Court reconvened at 11:07 a.m.)

10 MR. SKRZYNSKI: The People call Detective  
11 Chris Sovik.

12 THE COURT: All right. If you would  
13 take the witness stand and remain standing I  
14 would appreciate it. Do you solemnly swear  
15 or affirm the testimony you are about to  
16 give is the truth, the whole truth, and  
17 nothing but the truth?

18 THE WITNESS: I do.

19 THE COURT: Be seated please. State  
20 your name for the record and spell it.

21 THE WITNESS: Christopher Sovik, S-o- V  
22 as in Victor, -i-k.

23 ^CDETECTIVE CHRISTOPHER SOVIK  
24 Called by the Prosecution at 11:07 a.m.,  
25 sworn by the Court and testified.

1 CDIRECT EXAMINATION

2 BY MR. SKRZYNSKI:

3 Q What is your occupation, sir?

4 A I am a Sergeant with the South Lyon Police  
5 Department.

6 Q Were you involved in the investigation of this  
7 matter?

8 A Yes.

9 Q Okay. I want to point the date of December  
10 the Second 2006 on the hour of about two  
11 o'clock in the morning. Do you recall that  
12 date and time?

13 A I do, yes.

14 Q Where were you at that time?

15 A I was -- are you talking about the December  
16 2nd?

17 Q December the Second 2006.

18 A Okay. I eventually ended up going to the U  
19 of M Hospital.

20 Q Okay. In Ann Arbor?

21 A Yes, sir.

22 Q All right. Did you subsequently meet with  
23 Steven McBurney?

24 A Yes.

25 Q Is he in the courtroom today?



1 A Yes.

2 Q What is he wearing?

3 A An orange suit.

4 MR. SKRZYNSKI: Okay. Would the record  
5 indicate the Defendant has identified the  
6 witness -- the witness has identified the  
7 Defendant?

8 THE COURT: So reflected.

9 MR. SKRZYNSKI: Thank you.

10 BY MR. SKRZYNSKI:

11 Q Where did you have contact with Mr. McBurney?

12 A When did I?

13 Q Where?

14 A It was in a large conference room, I think.  
15 I believe it was on the fourth floor of the  
16 children's hospital.

17 Q Okay. How is it that you made -- can you  
18 describe what happened from the beginning, the  
19 moment you start contact with him?

20 A Yeah, we had -- Detective Sederlund and I  
21 were in this conference room and we had  
22 somebody go and retrieve Mr. McBurney. He  
23 came back to the room and we identified  
24 ourselves, explained why we were there and  
25 told him that we would ask him some

1           questions about the incident involving his  
2           daughter on November 30th.

3       Q     Okay. Now, the place where you were, you  
4           said that it was a conference room?

5       A     It was a very large conference room, yes sir.

6       Q     Can you describe it?

7       A     If you walk into the -- there was one door  
8           leading in. There was a large door, there  
9           was windows on each side and on top. As  
10          soon as you walk into the door there was a  
11          large wooden conference room table with about  
12          eight chairs all together and there were some  
13          other medical supplies in the room also.

14      Q     Okay. Were there any windows to the room  
15          besides the door window?

16      A     No, there was not.

17      Q     Okay. When you asked Mr. McBurney to come  
18          in, who else was there?

19      A     Detective Sederlund and I.

20      Q     Okay. When he entered you said you  
21          identified yourself?

22      A     Yes.

23      Q     And you told him -- why did you tell him you  
24          were there?

25      A     We told him --

1 Q I'm sorry, what was the reason you told him  
2 you were there for?

3 A We needed to ask him some questions about the  
4 injuries that his daughter Madison sustained a  
5 couple days earlier.

6 Q Okay. What was the seating arrangement?

7 A As soon as you walk into the room Mr.  
8 McBurney was sitting down, so he would have  
9 his back to the door.

10 Q Was the door locked or unlocked?

11 A It was unlocked, it was closed but it was  
12 unlocked.

13 Q Okay.

14 A Immediately to Mr. McBurney's right is where  
15 I stood or I sat, and then December the  
16 Second was to his left.

17 Q Okay. Was Mr. McBurney restrained in any  
18 way?

19 A No, sir.

20 Q Okay. What happened then?

21 A We just basically asked him to tell us about  
22 the incident that occurred on the 30th, why  
23 the paramedics were responding to his --  
24 responding to his home.

25 Q Okay. Now, was there -- could you observe

1 the Defendant's physical condition at that  
2 time?

3 A Yes.

4 Q Did he answer the questions that you asked  
5 him?

6 A Yes.

7 Q Did he seem to have any problems  
8 understanding what you were asking him?

9 A No.

10 Q Did he speak in a slurred voice at all?

11 A No.

12 Q Were his eyes red or glossy, or bloodshot?

13 A I don't believe so. I believe that he had  
14 just woken up a little bit earlier prior to  
15 us getting him, but other than that he  
16 seemed okay.

17 Q Did he say he was in need of food or drink,  
18 or any kind of sleep?

19 A No.

20 Q Did he say he had any kind of medical  
21 condition that was bothering him at that time?

22 A No.

23 Q Did he express any kind of problems that he  
24 was having to you that was causing him  
25 discomfort at the time he was talking to you?

1 A No.

2 Q All right. What happened then?

3 A We just asked him to basically tell us about  
4 the incident that happened on the 30th and  
5 he responded.

6 Q Okay. What did he say?

7 MR. WHITE: Well, let me lodge my  
8 objection, Your Honor.

9 THE COURT: Response?

10 MR. SKRZYNSKI: Judge, I think this is in  
11 a hospital conference room. He is not  
12 restrained, he is not -- the door is  
13 unlocked, he appears to be in good health  
14 and I think that this is not a custodial  
15 interrogation.

16 MR. WHITE: May I voir dire, Your  
17 Honor?

18 THE COURT: What is the basis of your  
19 objection?

20 MR. WHITE: As the Court is aware,  
21 the test is under the totality of the  
22 circumstances whether a reasonable person  
23 could believe that he was free or not free  
24 to leave. And I believe that under these  
25 circumstances if I may elicit some testimony

1 from the Officer that it is certainly at this  
2 point reasonable for Steve McBurney to  
3 believe --

4 THE COURT: You wish to voir dire him?

5 MR. WHITE: Yes, I do.

6 THE COURT: I'll allow it.

7 ^CVOIR DIRE

8 BY MR. WHITE:

9 Q Officer Sovik, this conference room is on the  
10 fourth floor of the pediatric intensive care  
11 unit, correct?

12 A I believe so, sir, yes.

13 Q And in the conference room that you were  
14 using for your questioning you had previously  
15 questioned Heather McBurney, right?

16 A Yes, sir.

17 Q And in this conference room was -- it was  
18 approximately 100 feet from Madison's room?

19 A Yes. Yes, approximately.

20 Q Okay. And there was one way in and one way  
21 out of this conference room, correct?

22 A As I can recall, yes sir.

23 Q The door, correct?

24 A Yes, sir.

25 Q Okay. And there was no windows in the

1 conference room other than the window in the  
2 door, correct?

3 A No, there were no windows to the outside  
4 nature, there were windows surrounding the  
5 door in the conference room leading to the  
6 hallway, so you could see who was out in the  
7 hallway.

8 Q Okay.

9 A There were plenty of those windows.

10 Q No windows to the outside, correct?

11 A Yes, sir.

12 Q Okay. And immediately outside the conference  
13 room there were three uniformed police  
14 officers, correct?

15 A No, sir.

16 Q There weren't any police officers there, any  
17 uniformed police officers?

18 A Not at the time of the investigation, no.  
19 There were never any police officers there the  
20 rest of that night. There were no police  
21 officers other than Detective Sederlund and I.

22 Q No Oakland County Sheriffs?

23 A No, sir.

24 Q No South Lyon Police Officers?

25 A No, sir.

1 Q Okay. Was there anybody -- after Steven  
2 McBurney came in that conference room you  
3 identified yourself, correct?

4 A Yes, sir.

5 Q And Sara Weaver, Case Worker, was in the  
6 conference room standing, correct?

7 A At what time?

8 Q When Steven McBurney was brought in?

9 A I believe she was, yes.

10 Q Okay. And you or Sederlund asked her, "Do  
11 you need anything else", is that true?

12 A I don't recall that. He may have asked her,  
13 I don't recall saying that.

14 Q Do you recall it being said?

15 A I can't -- I don't recall.

16 Q Do you recall her -- in fact she said in  
17 response to either your question or  
18 Sederlund's question, "No I have everything I  
19 need", isn't that true?

20 A It might be, but I don't know.

21 Q Okay. And she walked out of the room?

22 A Yes, sir.

23 Q Okay. And either you or Sederlund stood up  
24 and opened the door for her, correct?

25 A I don't recall.



1 Q Okay. And Steven McBurney was sitting with  
2 his back to the door?

3 A Yes, sir.

4 Q Okay. And then it was just you, Sederlund  
5 and Steven McBurney, correct?

6 A Yes, sir.

7 Q Okay. And you identified yourself as a  
8 Police Officer?

9 A Yes, sir.

10 Q Both of you had; and you identified the  
11 reason that you were there, correct, to ask  
12 him questions about injuries to his daughter,  
13 correct?

14 A Yes, sir.

15 Q Okay. And did you make any determination --  
16 did you or Officer Sederlund make any  
17 determination whether Steven McBurney was  
18 under the influence of any drugs?

19 A Did we ask him?

20 Q Did you make any determination in any form?

21 A Just from looking at him I determined that  
22 he didn't look like he was under any  
23 medication or any drugs or anything.

24 Q Is there anything else that you did? Did you  
25 ask him any questions about whether he took

1 any alcohol or drugs?

2 A No, sir.

3 Q Okay. Did Sederlund in your presence?

4 A No, sir.

5 Q Okay. Did you make any determination of  
6 whether Mr. McBurney was sleep-deprived?

7 A No.

8 Q Okay. When he walked into the room, isn't  
9 it true that he appeared that he had just  
10 woken up?

11 A Yes, sir.

12 Q Okay. Did you make any determination of how  
13 long he had slept?

14 A No.

15 Q Did you make any determination how long he  
16 had been at the hospital?

17 A No, sir.

18 Q Okay. And did it appear to you, Officer,  
19 that this is a person that -- and we know that  
20 Madison at this point was admitted  
21 approximately eight o'clock on November 30th,  
22 correct?

23 A Yes, sir.

24 Q This is, in fact, now December 2nd, is it?

25 A This is December 3rd.

1 Q December 3rd, correct?

2 A Yes, sir.

3 Q And it is approximately two a.m. in the  
4 morning, correct?

5 A Yes, sir.

6 Q Okay. Did you make any determination whether  
7 Steve McBurney had slept at all from November  
8 30th through the time period immediately  
9 preceding this questioning?

10 A No, sir.

11 Q Okay. And did Officer Sederlund in your  
12 presence?

13 A Not that I can recall.

14 Q Okay. And did you ask him whether he had any  
15 disabilities or was on any medications?

16 A No, sir.

17 Q Okay. So, what you're saying is, just from  
18 your observation of his appearance that he  
19 appeared to be in appropriate condition to ask  
20 questions, correct?

21 A Yes, sir.

22 Q Now, at this point, you had already talked --  
23 you had in the course of your investigation  
24 you had been -- you came to the station,  
25 correct, had been briefed by Sergeant Baaki,

1 correct?

2 A Yes, sir.

3 Q And a criminal history had been provided to  
4 you on both Heather and Steve?

5 A At one point they were provided, yes. I  
6 don't know if I requested them or --  
7 eventually they were, yes.

8 Q Certainly before this interrogation, correct?

9 A Yes. Yes, sir.

10 Q Okay. And you were also apprised of a prior  
11 incident, correct?

12 A Yes, sir.

13 Q With Mr. McBurney's son, correct?

14 A Yes, sir.

15 Q And you had talked to the paramedics, the  
16 fire fighters, correct, you had interviewed  
17 them?

18 A Yes, sir.

19 Q Okay. And then on December 2nd you and  
20 Sederlund came to U of M Hospital, correct?

21 A Yes, sir.

22 Q Okay. And you had spoke to the case worker,  
23 social worker, Sarah Weaver?

24 A Yes, sir.

25 Q And then after that you had interviewed a Dr.

1 Jeffrey Fleming, correct?

2 A Yes, sir.

3 Q And any other steps in your investigation at  
4 this point -- the next step was to interview  
5 Heather, correct?

6 A Yes, sir.

7 Q Any other steps in your investigation that I  
8 have omitted?

9 A Well, we stopped by the Northville Police  
10 Department to try to obtain a copy of the  
11 report from the 1998 incident.

12 Q But, you didn't get that report, did you?

13 A No, we did not.

14 Q Okay. So, at the time this interrogation  
15 started was approximately two a.m., correct?

16 A Yes, sir.

17 Q December 3rd?

18 A Yes, sir.

19 Q And you had formed a belief in your mind that  
20 Steven McBurney was responsible for the  
21 injuries caused to his daughter, correct?

22 A He could have been responsible, yes.

23 Q Okay. You had formed that opinion at that  
24 time, correct?

25 A Yes.

1 Q Okay. Did you bring any recording devices?

2 A No, sir.

3 Q Were they available for you to bring?

4 A No, sir.

5 Q No, sir. Okay. All right. Not a tape  
6 recorder; South Lyon Police Department doesn't  
7 have a tape recorder?

8 A You know I think we tried to get one of  
9 those mini-cassette recorders, we had a  
10 problem with batteries. We don't -- I  
11 haven't used them in years.

12 Q Does South Lyon Police Department have a tape  
13 recorder?

14 A I'm sure we do somewhere.

15 Q Okay. And did you bring it with you?

16 A No, sir.

17 Q Okay. Did you have other standard police  
18 equipment?

19 A A pen, or what do you mean?

20 Q Well --

21 A Video? Or, no.

22 Q Did you have a gun?

23 A Yes, sir.

24 Q Okay. Did you have hand-cuffs?

25 A Yes, sir.

1 Q Okay. Did you have a camera?

2 A No, sir.

3 Q You didn't have a camera?

4 A I don't believe so.

5 Q Did Detective Sederlund have a camera?

6 A I don't recall.

7 Q Okay. Was it your intent to then question  
8 Steven McBurney without any kind of recording  
9 device whatsoever?

10 A Yes, sir.

11 Q Okay. And you were the one who wrote the  
12 notes?

13 A I believe we both may have, I believe so.  
14 Yes, I took some notes, too.

15 Q Okay. You -- both you and Sederlund took  
16 notes?

17 A Yes, sir.

18 Q Okay. And who had asked the questions?

19 A We both did.

20 Q Both of you asked the questions?

21 A Yes, sir.

22 Q Okay. Was anybody primarily responsible for  
23 asking the questions of you --

24 A Not really.

25 Q Okay. You prepared a police report in this

1 case, correct?

2 A Yes, sir.

3 Q The police report, does it accurately reflect  
4 the substance of the interrogation of Steven  
5 McBurney on December 3rd at approximately two  
6 a.m?

7 A To the best of my ability, yes.

8 Q Okay. And the topics of -- you have reviewed  
9 it today, haven't you?

10 A Yes, sir.

11 Q Okay. Did it refresh your recollection of  
12 what happened?

13 A Yes, sir.

14 Q And the topic sequence that occurs in the  
15 police report, does that follow the topics in  
16 which you asked him questions that night?

17 A I believe so, yes.

18 Q Okay. So, the first topic of conversation  
19 was background?

20 A Yes.

21 Q How Madison got there?

22 A Yes.

23 Q The second was the questions about his son,  
24 Nicholas?

25 A Yes, sir.



1 Q Okay. And the injuries caused -- sustained,  
2 correct?

3 A Yes, sir.

4 Q And then at that point you informed him that  
5 you had conclusive evidence that Steven was  
6 responsible for the injuries to Madison,  
7 isn't that true?

8 A I believe that I said I had medical --  
9 conclusive medical evidence, yes.

10 Q So you, in fact, at that point you informed  
11 him that he -- Steven was responsible for the  
12 injuries to Madison, correct?

13 A Eventually through the interview, yes.

14 Q Okay. So, up to this point, now we certainly  
15 didn't inform him of his rights to Miranda,  
16 correct?

17 A That is correct.

18 Q Okay. And Sederlund -- neither you or  
19 Sederlund did, true?

20 A True.

21 Q And you know what those rights are?

22 A Yes, sir.

23 Q You didn't inform him of any one of the  
24 rights; the right to remain silent?

25 A I did not.

1 Q Did Sederlund?

2 A No.

3 Q You didn't inform him of his right that if he  
4 did say something it could be used against  
5 him or would be used? Did either one of you  
6 inform him of that right?

7 A No, sir.

8 Q Did you inform him of his right to have an  
9 attorney present?

10 A No, sir.

11 Q Did either one of you inform him of his right  
12 to have an appointed attorney if one could  
13 not be appointed (sic)?

14 A No, sir.

15 Q Did either one of you inform him that he was  
16 not under arrest?

17 A No, sir.

18 Q Did either one of you inform him at any time  
19 that he was free to leave?

20 A No, sir.

21 Q Did either one of you inform him that the  
22 door behind him was unlocked?

23 A No, sir.

24 Q Did Mr. McBurney become upset as a result of  
25 the questioning when you directed your

1 question to him -- or excuse me, the  
2 accusation to him that he was responsible  
3 for his daughter's injuries?

4 A Upset? I don't believe so.

5 Q No, he didn't? Okay. And, in fact, he asked  
6 to speak to a doctor, did you not -- he asked  
7 to speak to Madison's doctor?

8 A I don't recall that.

9 Q Okay. And he asked to speak to his wife,  
10 too, didn't he?

11 A Eventually, when we offered it to him he did,  
12 yes.

13 Q Okay. Did you ever offer him to speak to an  
14 attorney? Did you ever tell him he could  
15 speak to an attorney?

16 A No, sir.

17 Q Okay. And then the next topic after you  
18 informed him that he was responsible for the  
19 injuries to his daughter you gave the analogy  
20 about the funeral, correct, the funeral  
21 analogy, isn't that true?

22 A I believe that was before. Yeah, in the  
23 sequence of events I think that was  
24 beforehand.

25 Q Okay. And then there was a discussion about

1 polygraph, correct?

2 A Yes, sir.

3 Q Okay. And then after you continued to accuse  
4 him of being responsible, that's when you  
5 decided to bring in his wife, correct?

6 A Later on, yes sir.

7 Q Okay. And how far into the interview, how  
8 long was it?

9 A Probably, I think it was a little over two  
10 hours into it probably.

11 Q Okay. And, at this point, he was in that  
12 room continuously for two hours?

13 A Yes, sir.

14 Q Subject to questioning by you and Sederlund?

15 A That is correct.

16 Q Okay. And the time -- how long was Heather  
17 in the room?

18 A Forty minutes.

19 Q Okay. And then while Heather was in the room  
20 questioning continued, correct?

21 A What do you mean, after Heather was brought  
22 back in there? Yes, briefly.

23 Q Yes?

24 A Yes. Yes.

25 Q Okay. Both by you and Sederlund?

1 A Mainly by me.

2 Q Okay. And were you both continuing to write  
3 notes?

4 A I don't recall.

5 Q Okay. And at the conclusion of the -- when  
6 did the interrogation conclude?

7 A I want to say around -- somewhere a little  
8 before five o'clock.

9 Q Okay. And at the conclusion of the  
10 interrogation he was hand-cuffed and arrested,  
11 correct?

12 A Eventually, yes.

13 Q When was that?

14 A We allowed him to spend some time with his  
15 wife. He wrote out a statement for us. We  
16 contacted the Prosecutor for assistance and --

17 Q My question is -- I have a question; when was  
18 he arrested?

19 A Shortly after five o'clock.

20 Q Okay. And he was in that room continuously  
21 from the time the interrogation was started to  
22 the point of arrest, correct?

23 A Yes, sir.

24 Q Okay. And when you said you let him spend  
25 some time with his wife, you stood outside

1 the room, correct?

2 A Yes, sir.

3 Q There is no way that he could have left that  
4 room without passing by you or Sederlund,  
5 correct?

6 A Well yeah, correct.

7 Q Okay. In fact, the purpose of you standing  
8 outside the room was to make sure that he  
9 would not abscond, correct?

10 A That is true.

11 Q He was not free to leave, true?

12 A Yes.

13 Q Anybody else come in the room at any time  
14 during the interrogation other than Sederlund,  
15 yourself, Steven McBurney and Heather  
16 McBurney?

17 A I don't believe so.

18 Q Okay. At any time -- and at no time did you  
19 ever inform him of his Miranda Rights, isn't  
20 that true?

21 A That is correct.

22 MR. WHITE: Okay. Nothing further at  
23 this time. I renew my objection.

24 MR. SKRZYNSKI: I just have --

25 THE COURT: Approach the bench.

1 (Bench conference held at 11:29 a.m.)

2 ^CRESUME DIRECT EXAMINATION

3 BY MR. SKRZYNSKI:

4 Q Detective Sovik, you mentioned before that at  
5 some point the Defendant was not free to  
6 leave, correct?

7 A That is correct.

8 Q When was that point?

9 A That was after we had spoken with the  
10 Prosecutor, after he had spent time with his  
11 wife.

12 Q Was this after he made the statement or  
13 before?

14 A This was after he made a statement.

15 Q Was it after he made the written statement?

16 A Yes.

17 Q Okay.

18 THE COURT: I think he was clarifying  
19 that.

20 BY MR. SKRZYNSKI:

21 Q Did you ever tell him he was under arrest?

22 A Never.

23 Q Did you ever tell him that he was not free  
24 to leave?

25 A No.

1 Q Okay.

2 THE COURT: So, let me be clear on  
3 this. The point where you made the statement  
4 where he was not free to leave was after you  
5 had gathered all of this information?

6 THE WITNESS: That is correct, Your  
7 Honor.

8 THE COURT: All right.

9 BY MR. SKRZYNSKI:

10 Q Did you ever tell him before making arrest  
11 that he was not free to leave?

12 A No.

13 Q Okay. So, it was only until you told him?

14 A Yes.

15 Q All right. You said you have hand-cuffs and  
16 a gun; where were they?

17 A Underneath my jacket here on my waist. I had  
18 my gun on my right side here and I had the  
19 hand-cuffs around my belt in the back; my  
20 rear.

21 Q Were those visible?

22 A No.

23 Q Okay. And how about Detective Sederlund?

24 A I don't recall.

25 Q All right. Did you remember seeing hand-cuffs



1 or guns on him?

2 A I don't recall.

3 Q Okay. I have no further -- I think we have  
4 laid the proper foundation.

5 MR. WHITE: Your Honor, may I ask a  
6 couple more questions.

7 THE COURT: Response; go ahead. You  
8 want to ask a couple more questions I might  
9 as well let you.

10 ^CCROSS-EXAMINATION

11 BY MR. WHITE:

12 Q Your testimony is then, Sergeant, that Steven  
13 McBurney was free to leave?

14 A At what point?

15 Q Okay, let's say 15 minutes into it?

16 A Yes, sir.

17 Q He was -- if he would have gotten up and  
18 walked out it would have been fine with you  
19 despite your subjective belief that he was  
20 responsible for Madison's injuries?

21 A Yes, sir.

22 Q Okay. And he was free to leave after your  
23 discussion about Nicholas, his prior son?

24 A Yes, sir.

25 Q Okay. And he was free to leave after the

1           interrogation became accusatory when you told  
2           him that he was responsible for Madison's  
3           injuries, is that true?

4           A     Yes, sir.

5           Q     Okay. And then he was free to leave before  
6           Heather was brought into the room?

7           A     Yes, sir.

8           Q     Okay. And then he was free to leave after  
9           his conversation with Heather?

10          A     Not -- no.

11          Q     Okay. And so at what time wasn't he free to  
12          leave, what time was it?

13          A     Pretty much after he had time with Heather  
14          and he wrote out the statement. While he  
15          was doing that is when I called the  
16          Prosecutor, so it was about that time.

17          Q     Okay. When -- he wrote out a written  
18          statement, correct?

19          A     Yes, sir.

20          Q     Had you talked to the Prosecutor yet?

21          A     I was in the process of talking with her  
22          when he was writing out the statement.

23          Q     Okay. You were in the room?

24          A     I was not, no.

25          Q     Okay. And the time then, what time was this

1 that you talked to the Prosecutor?

2 A Around five some time.

3 Q And you called the Prosecutor?

4 A I believe Detective Sederlund called her, yes.

5 Q Okay. Detective Sederlund called her on what,  
6 his cell phone?

7 A Yes, sir. One of our cell phones.

8 Q Okay. Any indication of the time that call  
9 was made?

10 A I don't recall. It was around five somewhere.

11 Q So, excuse me for being slow, but was he free  
12 to leave before he wrote out his written  
13 statement?

14 A No.

15 Q No. Then how long before that was he not  
16 free to leave? If he wasn't free to leave  
17 before he wrote his written statement --

18 A Okay.

19 Q -- how long before that? Let's try it this  
20 way.

21 A Yes.

22 Q How long had Heather been in the room?

23 A Five minutes at the most.

24 Q Five minutes?

25 A Uh-huh.

1 Q Okay. At that point, you made the decision  
2 that Steven McBurney was not free to leave?

3 A That is correct.

4 Q Okay. Did you communicate that to Detective  
5 Sederlund at all?

6 A We were discussing it. Actually, I never  
7 actually told him like, "He's not free to  
8 go". I made it my decision in my mind that  
9 he wasn't going to be free to go, let's  
10 contact the Prosecutor for assistance to see  
11 what's going to happen, see what they want  
12 to do.

13 Q Okay. What my question is, did you  
14 communicate that to Detective Sederlund?

15 A I think I may have at some point.

16 Q And how did you communicate to him?

17 A I was talking to him.

18 Q Talking to him where?

19 A Outside the hall-- room, in the hallway  
20 outside the room.

21 Q My question is when you made the decision that  
22 Steven McBurney was not free to leave did you  
23 communicate it at that time?

24 A No, sir.

25 Q Okay. And you made that communication to

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1 Sederlund when?

2 A About -- after we left the room and left him  
3 with Heather.

4 Q Okay. So, you were talking to the  
5 Prosecutor?

6 A Yes, sir.

7 Q Okay. Did you make that determination before  
8 you talked to the Prosecutor?

9 A Yeah.

10 Q Okay. Before he wrote his written statement?

11 A Yes.

12 MR. WHITE: Okay. Nothing further.

13 CREDIRECT EXAMINATION

14 BY MR. SKRZYNSKI:

15 Q Okay. But, at no time did you ever inform  
16 him that he was not free to leave until you  
17 actually arrested him, is that correct?

18 A That is correct.

19 Q All right. And that was after he had made  
20 the oral statement and after he had done the  
21 written statement, is that correct?

22 A Yes, sir.

23 Q Okay.

24 THE COURT: All right. Let me be  
25 clear on this. At some point, in your own

1 mind, if he tried to get up you would have  
2 stopped him?

3 THE WITNESS: Yes, sir.

4 THE COURT: Where was that point in  
5 this process?

6 THE WITNESS: That was after he had told  
7 Heather that he was responsible for the  
8 injuries to Madison.

9 THE COURT: So, after he made the oral  
10 statement before he made the written  
11 statement?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. I think that,  
14 gentlemen, I am satisfied I know where the  
15 boundary line is.

16 MR. SKRZYNSKI: Judge, it doesn't make any  
17 difference what the subjective belief of the  
18 police are, even if the police believe that  
19 he is not free to leave and would not have  
20 let him go. The question is whether he  
21 could reasonably believe that he was free to  
22 leave or not. It's not the police's  
23 subjective impression at all. That's -- the  
24 United States Supreme Court case Stanford  
25 against California 511.U.S.318. So, as long

1 as they don't -- as long as they don't  
2 communicate that to him then their thinking  
3 is irrelevant, and that was -- it's perfectly  
4 obvious during the course of his testimony  
5 they didn't talk about arresting him, they  
6 didn't tell him he was under arrest until  
7 they actually formally arrested him. And all  
8 of that occurred after all both oral and  
9 written statements were made.

10 So, I think that the proper foundation  
11 has been laid. This was not a custodial  
12 interrogation and Miranda doesn't attach.

13 THE COURT: Thank you. Response?

14 MR. WHITE: Your Honor, the subjective  
15 beliefs of the Police Officers are relevant  
16 when they were communicated to the accused,  
17 and they were in this case shortly after this  
18 interview started. The topics; background,  
19 how Madison got there. Topic number two, his  
20 prior son. Topic number three, "we believe  
21 you caused the injuries to your daughter".  
22 At that point it became accusatory. At that  
23 point they had the duty to Mirandize him.  
24 At that point it became -- at least at that  
25 point it became a custodial interrogation.

1 THE COURT: Thank you.

2 MR. WHITE: Judge, the parameters are  
3 that it was -- the test is on the totality  
4 of the circumstances whether it's reasonable  
5 to believe that Steven McBurney believed that  
6 he was not free to leave. The child  
7 admitted at eight o'clock on November 30th,  
8 this is two a.m. on December 3rd. We know  
9 -- we can -- I don't think it would take  
10 much for the Court to imagine the trauma  
11 that was going on with both Steve and his  
12 wife about the hospitalization of his  
13 daughter.

14 The methods used to determine whether he  
15 was of right mind; sound mind, none really  
16 competent to speak of. Your Honor, I do  
17 believe under these circumstances, which are  
18 unique in the sense of the length of time  
19 that he was at the hospital, the length of  
20 time of the interrogation, the topic when it  
21 became accusatory before there was any  
22 incriminating statements is when it became  
23 incriminating and he says approximately 15  
24 minutes into the interview.

25 Well, when was Heather brought in,



1 approximately five o'clock or excuse me,  
2 about four ten for 15, he said about 40  
3 minutes before the arrest. So, almost two  
4 hours of accusatory interrogation going on.  
5 Is it reasonable to believe that this  
6 Defendant or any Defendant would believe that  
7 he is not free to leave with the  
8 circumstances of his back sitting to the  
9 door, two Police Officers accusing him of a  
10 heinous crime. I believe, Judge, it is  
11 properly excluded under the Fifth Amendment.

12 THE COURT: Thank you. The Court  
13 has had the experience of reading Michigan  
14 Law carefully and Federal Law and has made a  
15 number of rulings. I have been reversed  
16 three times without propagation. Whenever I  
17 found that any sort of custodial  
18 interrogation was, in fact, in need of  
19 Miranda Warnings before proceeded, I have  
20 done it where people were locked -- twice  
21 that I can recall where people were locked in  
22 hand-cuffs in the back of a police car and  
23 interrogated for hours. But, the Court  
24 called it, the Court of Appeals, temporary  
25 detention for investigative purposes. They

1 have published that decision. I think I know  
2 why. But, I am keenly aware in Michigan  
3 there seems to be a set of cases that propel  
4 us to this outcome. And until the police say  
5 a Defendant is under arrest Miranda doesn't  
6 apply.

7 I have phenomenal trouble with that  
8 statement, because it encourages police to  
9 lie under oath. It basically says to them,  
10 as long as you -- even if you have made the  
11 determination to arrest a Defendant and they  
12 are not free, as long as you are willing to  
13 go on the stand and say, "I didn't tell him  
14 he was under arrest and it doesn't matter  
15 what my subjective thinking -- and I really  
16 didn't intend to arrest him, he was free to  
17 leave, Miranda doesn't apply".

18 I don't think that has happened here by  
19 the way. I think I got an honest piece of  
20 testimony from this officer. I am very  
21 impressed by the honesty of his testimony. I  
22 want to compliment you, frankly, on that.  
23 His credibility went up significantly. Not  
24 that it wasn't good to begin with, but it  
25 went up significantly with me today, because

1 I thought he tried to tell the truth as he  
2 knew it exactly.

3 And while the Court's ruling in this  
4 matter is going to be sort of splitting down  
5 the hair from a philosophical basis I think  
6 that it's very clear that when he says that  
7 he had not made the decision to detain him,  
8 he had not made that decision at that point.  
9 I am going to allow the oral portion of the  
10 statement. I will not allow the written  
11 statement, in that, I find Miranda should  
12 have been applied at that point.

13 I do that with the clear understanding  
14 if it ever gets to a higher court, there is  
15 fair chance that the court won't agree with  
16 me on that. They haven't agreed with me  
17 before. Of course, they haven't been willing  
18 to say it publicly either. I think the  
19 standard is better and would encourage all  
20 and it would be a better standard of justice  
21 if we returned to the old focus test. When  
22 a person became a focus of interrogation you  
23 gave them Miranda Warnings. It didn't seem  
24 to hurt police's ability to get statements  
25 and I think I am going to fact resulted in a

1 stronger belief in justice both from the  
2 standpoint of the police and Defendants.

3 Having said that, I don't believe that  
4 is the standard. I believe the standard is  
5 until the police have made a determination  
6 that the Defendant is not free to leave then  
7 Miranda doesn't apply. As Counsel has then  
8 -- as the Prosecutor pointed out, it may well  
9 be that you can extend that standard even  
10 when they have made that determination, but  
11 haven't told the Defendant, you might go to  
12 that standard. But, I really believe that  
13 that encourages perjury. I don't think it  
14 happened with this officer. In fact, I am  
15 absolutely certain it didn't happen with this  
16 officer. I am just incredibly impressed by  
17 that testimony. But, I certainly could see  
18 officers where they would make such  
19 statements, and I wonder why we in the  
20 judiciary would want to encourage that.

21 Anyway, for purposes of this proceeding  
22 without getting into the dicta of my point  
23 of view on this, I believe that there is  
24 clear testimony on this record, which I  
25 believe absolutely that until the Defendant's

1 written statement occurred he was free to  
2 leave and I am going to allow the Prosecutor  
3 to present the evidence of the oral  
4 statement. So, the objection is sustained in  
5 part and denied in part.

6 MR. SKRZYNSKI: Very well, Your Honor.

7 BY MR. SKRZYNSKI:

8 Q So, when he came in and you sat him down and  
9 you started to talk to him, what did he say?

10 A Well, I just basically asked him about -- I  
11 asked him if Heather -- if he and Heather had  
12 any other children, if he had ever been  
13 married before and he said, "No". They only  
14 had one child in common, which was Madison.  
15 I asked him if he had any other children  
16 from another relationship and he said, "No".

17 Then I asked him to tell me about the  
18 incidents that occurred as to why the  
19 paramedics responded to his house that day,  
20 the 30th, and he said that -- he said that  
21 him and his wife, Heather, have this process  
22 to relieve some anxiety from their daughter  
23 Madison because his wife works in the  
24 afternoon, she leaves at six o'clock, they  
25 have a habit of putting her down around six

1 o'clock. His wife, Heather, leaves and then  
2 he wakes her up like an hour later and then  
3 he can spend some time with her.

4 On that night the same thing happened,  
5 he said that she was kind of throwing up  
6 throughout the day and not feeling that well,  
7 but when she woke up that evening at seven  
8 o'clock she was a bit cranky, but nothing  
9 out of the ordinary. He prepared a bottle  
10 for her, he put her in the baby seat, a  
11 bouncy seat, which is in the living room and  
12 he gave her a bottle. A couple minutes  
13 later the baby spit up the bottle. He  
14 retrieved the baby from the bouncy seat,  
15 took her into Madison's bedroom, changed her  
16 diaper, changed her clothes, put her leg  
17 brace on and then put her on the ground in  
18 the bedroom. A couple minutes later he  
19 noticed that the baby was gurgling, having  
20 trouble breathing and he said that that  
21 happens sometimes she gurgles on her spit  
22 that she has from the bottle.

23 So, the baby fell backwards, and seized,  
24 her legs became kind of rigid and then  
25 eventually she became unresponsive and then

1 he called 911 and he got some instructions  
2 from the dispatcher to give her -- help her  
3 -- assist her in breathing. He disrobed her  
4 with everything except the diaper and then  
5 he brought her back to the living room  
6 inside the near front door to wait for  
7 medical personnel for assistance.

8 Q Okay. Did there come a time when he gave a  
9 different version of that?

10 A Eventually, yes.

11 Q Okay. When did that happen?

12 A Later on in the interview just prior to us  
13 -- well he eventually ended up telling --  
14 when we brought his wife Heather back in is  
15 when he told us -- after that he told us --  
16 he told Heather about what had happened and  
17 then we got some more details about what  
18 exactly happened that day.

19 Q Prior to Heather coming into the room, do you  
20 remember the events that transpired just  
21 before she came back into the room?

22 A Yes.

23 Q What happened?

24 A Basically said, "Hey listen, we know you are  
25 responsible for this". I said, "I know how

1           it is". I said, "I have got three kids of  
2           my own". I said, "I know how they get  
3           inconsolable", blah, blah, blah. You know I  
4           said, "They cry if they're fussy, I  
5           understand that". And I said -- and then as  
6           I was talking to him there were several  
7           periods of like just lengthy silence and  
8           stares, and then after I got done talking he  
9           said --

10        Q    Lengthy silences and stares?

11        A    Yes.

12        Q    Was he staring?

13        A    Oh yes.

14        Q    Okay.

15        A    And --

16        Q    Were you staring at him?

17        A    Well, we were looking at each other, but he  
18           was just kind of like staring -- he was  
19           looking straight ahead and we were on the  
20           side --

21        Q    You are indicating over your shoulder, is that  
22           --

23        A    No, we're talking like just straight ahead.

24        Q    Oh, okay.

25        A    Because we were on each side of him, he was



1 looking straight ahead.

2 Q Okay.

3 A So, during the conversation we told him  
4 about, you know, how good people make  
5 mistakes and I know about the children issue  
6 and he said, "My life is over".

7 Q Okay.

8 A And I said, "Well . . .", I said, "No your  
9 life is not over". I said, "You're still  
10 young". I said, like I said, "Good people  
11 make mistakes". I said -- I said, "Heather  
12 said you are a good father, you are a good  
13 provider". I said, "She is going to need  
14 you through all of this". I said, "If  
15 nothing else . . .", I said, "she is going  
16 to need, you know, some closure to this as  
17 to what happened".

18 A lengthy silence, more stares, more  
19 conversation. And I said to him, I said  
20 basically, I said, "Well, why don't you just  
21 tell me what happened, you know, just get it  
22 off your chest and tell me what happened".  
23 More silence. And then I said, "Well I'll  
24 tell you what . . .", I said, "Would it be  
25 easier for you to tell us if we brought

1 Heather in here so you could explain it to  
2 her"? He said, "Yeah I would like to talk  
3 to her".

4 Detective Sederlund went out and  
5 retrieved Heather, brought her back in here.  
6 She sat down next to me, which is right next  
7 to Mr. McBurney, and the first thing they  
8 discussed actually was the fact that Heather  
9 knew that he had another son, Nicholas  
10 Kennedy, but they never discussed it, he  
11 never told her.

12 After getting that issue out of the way,  
13 Heather looked at him and said, "What  
14 happened"? He looked at her and said, "I  
15 made a mistake". And she is like, "What  
16 happened"? He said, "I threw her into the  
17 crib". Then he went on to say, "You know  
18 how difficult she has been, I wanted you to  
19 work days so we could tag-team her at night.  
20 You know it's difficult for me here by  
21 myself. You know, she is inconsolable  
22 sometimes". And that was pretty much it.

23 Q Did you ask him to go further after that?

24 A Yes.

25 Q All right. What happened?

1       A     I basically asked him to tell me what happened  
2       and he said that -- the first part was right  
3       -- he kind of went over the systems they have  
4       about Heather and the anxiety issue, and after  
5       Heather had left for work he got her up from  
6       her nap, he gave her a bottle, put her in the  
7       bouncy seat in the living room.

8               MR. WHITE:       Objection as to -- if he  
9       is testifying to events, he can't do that.  
10       He can testify as to statements, and I am  
11       wondering who is making these statements. Is  
12       it Heather or --

13              THE COURT:       Yeah, be clear on this Mr.  
14       Prosecutor.

15       BY MR. SKRZYNSKI:

16       Q     Whose statements are these?

17       A     This is my conversation with Mr. McBurney.  
18       These are Mr. McBurney's statements.

19       Q     All right, go ahead.

20       A     So, he prepares a bottle for her, puts her in  
21       the bouncy seat in the living room. She is  
22       crying, she is cranky, she is screaming. She  
23       spits the bottle out, that makes him upset.  
24       He goes into the room, he takes her out of  
25       the bouncy seat, he brings her into Madison's

1 bedroom. He is changing her diaper, he is  
2 changing her clothes, putting the leg brace on  
3 her and while he is doing that she is still  
4 crying and she is inconsolable. He picks her  
5 up and she starts screaming in his ear. He  
6 said he got mad and frustrated and he threw  
7 her into her crib.

8 Q Did he say from how far?

9 A I asked him that and he said he was about  
10 two feet away.

11 Q All right. Did he describe how it was when  
12 the baby landed or where she landed?

13 A He said that -- he said that the back of her  
14 head hit one of the wooden spindles that was  
15 in the crib.

16 Q Okay. And then what?

17 A And then he said that she seized up, so he  
18 grabbed her, he called 911.

19 Q When he said, "seized up", what did he mean?

20 A Had a seizure.

21 Q Okay.

22 A He believed that she had a seizure.

23 Q All right.

24 A He called 911, explained what was going on  
25 with them. The dispatcher assisted him in

1 giving breaths and then the paramedics and  
2 personnel eventually showed up.

3 MR. SKRZYNSKI: Okay. Your Honor, if I  
4 may have a moment?

5 THE COURT: Yes.

6 BY MR. SKRZYNSKI:

7 Q Can you describe the Defendant's demeanor as  
8 he was telling you these last facts?

9 A He -- actually he was kind of quiet. I  
10 mean, just a lot like I said, sometimes  
11 there was some lengthy pauses and stares and  
12 his voice seemed to lower a little bit, but  
13 other than that he just seemed like he was  
14 like the conversation we had been having for  
15 hours prior.

16 Q Okay. Just being factual?

17 A Yes, sir.

18 MR. SKRZYNSKI: Okay. I have nothing  
19 further.

20 THE COURT: Cross? Recalling that  
21 you have already had a significant cross on  
22 him.

23 MR. WHITE: Well, I have got some  
24 more.

25 THE COURT: I know. Well, approach

1 the bench.

2 (Bench conference held)

3 THE COURT: Breaking for lunch, see  
4 you all at one-thirty.

5 (Court in recess at 11:44 a.m., Court  
6 reconvenes eyetooth)

7 THE COURT: All right. Recalling the  
8 matter of People versus Steven McBurney.  
9 Deputy, after you have got him seated please  
10 take the cuffs off of him.

11 DEPUTY: Yes, sir.

12 THE COURT: Let's have the witness  
13 retake the stand. Detective, remember you  
14 are still under oath.

15 THE WITNESS: Yes, sir.

16 THE COURT: Proceed.

17 ^CRECROSS-EXAMINATION

18 BY MR. WHITE:

19 Q Sergeant, it's a true statement that it was  
20 on December 2nd you became first involved in  
21 this case, correct?

22 A Yes, sir.

23 Q And the time that you received notice  
24 regarding your involvement?

25 A About nine o'clock.

1 Q Nine p.m?

2 A Yeah, I think when I got a call from  
3 Sergeant Baaki it was around seven-thirty and  
4 I said I would be in around nine or  
5 nine-thirty.

6 Q And the time you got up that day?

7 A Five o'clock in the morning.

8 Q Okay. And did you stay up awake  
9 continuously since five?

10 A Yes.

11 Q Throughout the day?

12 A Yes.

13 Q Okay. And then we know that we had gone over  
14 what you had done, the steps that you had  
15 taken, and did -- up to the point of the  
16 interview with Steven McBurney, which was  
17 December 3rd approximately two a.m., had you  
18 slept at all?

19 A No, sir.

20 Q Okay. And after the interview, and I believe  
21 you said the time of the arrest was  
22 approximately five a.m., correct?

23 A I think so, a little bit after five o'clock,  
24 yes.

25 Q And then you arrested him, took him to

1           Oakland County Jail --

2       A     Yes.

3       Q     -- correct?

4       A     No.

5       Q     And --

6       A     I did not transport him to Oakland County  
7           Jail.

8       Q     Okay. After the arrest, what did you do?

9       A     We brought him back to the South Lyon Police  
10           Department.

11      Q     Okay. And then what did you do after that?

12      A     I did some paperwork and then I went home.

13      Q     Okay. And the paperwork was involving this  
14           case?

15      A     Yes.

16      Q     Okay. And the written report, the typewritten  
17           report that is prepared in this case, did you  
18           prepare it?

19      A     It was a joint effort on Detective Sederlund  
20           and I.

21      Q     Okay. Both of you did it together?

22      A     Yes.

23      Q     You sat next to each other and typed it up?

24      A     Yes. Yes, sir.

25      Q     And over what period of time did you do that?



1       A     I believe it was the next day we came in for  
2             like three hours and then -- a day had  
3             passed. We took Sunday off, if I can  
4             recall, and then we came back in Monday --  
5             if I can recall the days.

6       Q     That's when you completed your written report,  
7             the typewritten report?

8       A     Actually, I believe it was the following  
9             Monday, actually.

10      Q     Okay.

11      A     The following Monday.

12      Q     And you transcribed it from what?

13      A     From my notes.

14      Q     From the notes?

15      A     Yes.

16      Q     And the notes from -- and Sederlund's notes  
17             also?

18      A     Yes, sir.

19      Q     Okay. Did you preserve those notes?

20      A     I may have them in the station somewhere.

21      Q     Okay. Did you -- when you provided a  
22             discovery request to the Prosecution did you  
23             look for those notes anywhere?

24      A     No.

25      Q     Okay. Those notes could still exist?

1 A They may.

2 Q And Sederlund's also?

3 A Possibly.

4 Q Okay. We know there is no recording of it,  
5 correct?

6 A That is correct.

7 Q Okay. You reviewed the typewritten report  
8 today before you testified?

9 A Yes, sir.

10 Q And is it accurate regarding the statements  
11 made by you, Sederlund, and Mr. McBurney?

12 A Yes, sir.

13 Q Okay. Any changes you want to make right  
14 now?

15 A No, sir.

16 Q Okay. And did you graduate from high school?

17 A Yes, sir.

18 Q And what high school; what year?

19 A Bethel Park Senior High School in Bethel Park,  
20 Pennsylvania 1985.

21 Q Okay. And did you attend college?

22 A Yes, sir.

23 Q What college?

24 A I went two years to Washington and Jefferson  
25 College in Washington, Pennsylvania.

1 Q Okay.

2 A And then I transferred to Olivette Nazarene  
3 University in Kankakee, Illinois.

4 Q Okay, did you receive a degree?

5 A Yes, sir.

6 Q And what degree; what was your degree?

7 A Psychology and a minor in Sociology.

8 Q What was your grade point in high school?

9 A Between maybe 3.2, somewhere around there.

10 Q And what about in college?

11 A Same thing.

12 Q Okay. And how long have you been a Police  
13 Officer in the State of Michigan?

14 A Over -- about 15 years and four or five  
15 months.

16 Q Continuously?

17 A Yes, sir.

18 Q With the South Lyon Police Department?

19 A Yes, sir.

20 Q Okay. And besides your position as Sergeant,  
21 have you held any other positions?

22 A I was a Road Patrol and I was a Detective  
23 for a while.

24 Q How long were you on patrol?

25 A Five years.

1 Q And a Detective?

2 A Probably -- I was Detective Sergeant for  
3 maybe a year.

4 Q And how long have you been -- I believe your  
5 classification now is Sergeant?

6 A Yes, sir.

7 Q And how long have you been a Sergeant?

8 A I have been a Sergeant since February of  
9 '96/'97.

10 Q All right.

11 A About ten years.

12 Q Ten years?

13 A Yes, sir.

14 Q Okay. And you have received specific  
15 training in the context of your position  
16 being a Police Officer, true?

17 A Yes, sir.

18 Q Including the use of the -- how to  
19 interrogate, is that true?

20 A Yes, sir.

21 Q Okay. Have you ever worked on a First Degree  
22 Child Abuse case before?

23 A No, sir.

24 Q Ever worked on a Felony Murder case before?

25 A No, sir.

1 Q So, this is your first as to both of those?

2 A Yes, sir.

3 Q Okay. Have you ever testified in court

4 before?

5 A Yes, sir.

6 Q Do you know how many times?

7 A Twenty.

8 Q Okay. And has it always been in your

9 position as a Police Officer?

10 A Yes, sir.

11 Q Testifying for the People, the Prosecution?

12 A Yes, sir.

13 Q All right. Besides the report that was

14 prepared by you and Detective Sederlund, did

15 you use any other documents to review; did

16 you review any other documents before you --

17 A No, sir.

18 Q -- testified today?

19 A No, sir.

20 Q Now, I noticed in the report that there are

21 certain sentences and words that are quotes,

22 correct?

23 A Yes, sir.

24 Q And others that are not, correct?

25 A Yes, sir.

1 Q And is it a fair statement to say that the  
2 words that are in quotes you are saying that  
3 were directly made by Steven McBurney, is  
4 that true?

5 A Correct.

6 Q Okay. And the words that are not in quotes  
7 are phrases and words that you are using to  
8 paraphrase his testimony, correct?

9 A Yes, sir.

10 Q Okay. So, when you said earlier that he  
11 said, "My life is over", that was a direct  
12 quote, correct?

13 A Yes, sir.

14 Q And when you said he said, "I made a mistake",  
15 that was a direct quote, correct?

16 A Yes, sir.

17 Q Okay. And so then we can agree when the word  
18 screaming is in the report, he didn't say  
19 that word, did he?

20 A No, he did actually.

21 Q But, it's not in quotes, is it?

22 A That is correct.

23 Q Okay. In fact, you said that word. You  
24 said, "Madison was screaming in your ear",  
25 and Steven didn't agree, did he?

1 A No.

2 Q Okay. But, we agree it's not in quotes?

3 A That is correct.

4 Q Any reason why it's not in quotes?

5 A No.

6 Q Okay. And we can also agree that the word

7 inconsolable was not used by Mr. McBurney?

8 A That is correct.

9 Q Okay. That is your word, correct?

10 A Yes, sir.

11 Q And it was not in quotes in the report,

12 correct?

13 A Correct.

14 Q And we can also agree that the word mad was

15 not Mr. McBurney's word either, was it?

16 A Yeah, I don't recall.

17 Q Okay. But, we can agree that the word is not

18 in quotes in your report?

19 A That is correct.

20 Q Okay. And we can also agree that your

21 report says, he said that he got mad and

22 frustrated and threw her into her crib, that

23 was not Mr. McBurney's words, was it?

24 A No, I think that was. I think --

25 Q But was -- but we don't have it in quotes in

1 your report, do we?

2 A No, we don't.

3 Q Okay. And we also can agree that when it  
4 says here, he said he was about two feet  
5 away, that wasn't Mr. McBurney's statement  
6 either, was it?

7 A No, it was.

8 Q Okay. But, that's not in quotes either, is  
9 it?

10 A No.

11 Q Okay. And we can also agree that the  
12 statement, Steven stated when he threw Madison  
13 into the crib, the back of her head hit the  
14 bars, that wasn't his statement either, was  
15 it?

16 A No, that was his statement.

17 Q Okay. But, that is not in quotes either?

18 A That's correct.

19 Q Okay. And the word spindle that you used in  
20 your direct testimony, that's not Mr.  
21 McBurney's word, is it?

22 A I can't recall.

23 Q But, we know that's not in your report, is it?

24 A The word "spindle"?

25 Q Spindle.



1 A Yeah, it's not.

2 Q Okay. When you said several times in your  
3 direct testimony that Steven McBurney stared  
4 for a lengthy period of time; well how long is  
5 lengthy?

6 A Twenty seconds, sometimes like a minute,  
7 sometimes it was longer.

8 Q Okay. And you have independent recollection  
9 of this?

10 A Yes, sir.

11 Q And did you actually time the period of time  
12 that these lengthy stares were going on?

13 A No, sir.

14 Q Okay. We can agree, Officer, that there is no  
15 indication whatsoever in your report the  
16 definition of "lengthy", isn't that true?

17 A That is correct.

18 Q Okay. No; it was 20 seconds or up to a  
19 minute, correct?

20 A That is correct.

21 Q You are telling me now here, you know April  
22 27th, you can independently recall how long it  
23 was --

24 A Yes, sir.

25 Q -- in an interview on December 3rd at two

1 a.m. in the morning after you had not slept  
2 for how long?

3 A Almost 24 hours.

4 Q Twenty-four hours?

5 A Yeah, without a doubt.

6 Q Okay. Now, what are the dimensions of the  
7 conference room?

8 A If I had to say approximate, let's say maybe  
9 twelve feet wide by about twenty feet long,  
10 probably.

11 Q Okay.

12 A If I had to estimate.

13 Q You certainly didn't measure it, did you?

14 A No. No, sir.

15 Q Did you or Officer Sederlund take any pictures  
16 of Madison?

17 A I didn't, no.

18 Q Were any pictures taken in your presence?

19 A No, sir.

20 Q Were you at the hospital when she passed  
21 away?

22 A No, sir.

23 Q In the report there is a statement that says,  
24 "I informed him that there was inconclusive  
25 evidence provided by the medical staff that

1           Madison suffered non-accidental injuries due  
2           to trauma or abuse or neglect", do you recall  
3           that statement?

4       A     Yes, sir.

5       Q     Inconclusive?

6       A     I believe so.

7       Q     Is that a correct statement? I -- first of  
8           all, who is the "I" referred to in this  
9           statement?

10      A     Me.

11      Q     Okay. You?

12      A     Yes, sir.

13      Q     Okay. And when the word "inconclusive" is  
14           used, is that a correct statement?

15      A     Probably not.

16      Q     Okay. So, there is at least one error,  
17           correct?

18      A     Yeah, could be more.

19      Q     Okay. Could be more. Do you want to tell  
20           me of any more right now?

21      A     No.

22      Q     Do you want to look at this to tell me if  
23           there is any more?

24      A     No, sir.

25      Q     You're sure that -- you're sure?

1 A Continue; we're good.

2 Q In the sequence -- the topic sequence you  
3 said, that is the topic sequence as it is in  
4 your report, that's the way it was at the  
5 time throughout the questioning and  
6 interrogation of Steven McBurney, correct?

7 A Yeah, the best I can recall, yes sir.

8 Q Okay. And the discussion about Heather,  
9 Heather being there, that was really about  
10 Heather assisting Steven with the -- when  
11 Madison -- when she went into distress, isn't  
12 that true?

13 A I don't understand the question.

14 Q You recall the topic when Steve and Heather  
15 had been brought back in the room?

16 A Yes, sir.

17 Q Okay. And Steve said that he wished that she  
18 had been there?

19 A Yes, sir.

20 Q Okay. In fact, that context was he wished  
21 that she had been there, because as he  
22 stated, she would have -- when Madison went  
23 into distress that Heather could have helped,  
24 correct?

25 A No, I don't believe so. I didn't interpret

1 it that way.

2 THE COURT: I have to ask you to  
3 stay at the microphone, my clerk is --

4 MR. WHITE: I'm sorry.

5 THE COURT: -- having some trouble  
6 picking up.

7 MR. WHITE: I'm sorry, I will speak  
8 louder and stand still.

9 THE COURT: Okay.

10 MR. WHITE: I don't think I have  
11 anything further at this time, Your Honor.

12 THE COURT: Thank you. Any redirect?

13 MR. SKRZYNSKI: No thank you, Your Honor.  
14 May this witness be excused?

15 THE COURT: He can be, or he can  
16 remain in the courtroom now that he has  
17 testified.

18 MR. SKRZYNSKI: Thank you.

19 (The witness was excused)

20 MR. SKRZYNSKI: The People call Paul  
21 Sumner to the stand.

22 MR. WHITE: Your Honor, just so long  
23 as he is going to be in the courtroom that  
24 there be no rebuttal of this witness.

25 THE COURT: If they call him again, he

1 better be out of the courtroom if they have  
2 any reason to recall him, because once he is  
3 in the courtroom he doesn't testify.

4 MR. WHITE: And I beg your pardon,  
5 please, I have one more question of  
6 Detective Sovik, sir, I'm sorry.

7 THE COURT: Approach the bench.  
8 (Bench conference held)

9 THE COURT: All right. Detective,  
10 please step back into the witness stand for  
11 one question, I am going to allow it.

12 MR. WHITE: My apologies to the Court.

13 THE COURT: I think it's a reasonable  
14 question.

15 BY MR. WHITE:

16 Q Sergeant?

17 A Yes, sir.

18 THE COURT: Remember you are still  
19 under oath?

20 THE WITNESS: Yes, sir.

21 BY MR. WHITE:

22 Q What time did Steve say that Madison woke up  
23 on November 30th after Heather went to work?

24 A About seven o'clock.

25 Q Thank you. That is seven p.m., right?

1 A Yes, sir.

2 MR. WHITE: Thank you.

3 THE COURT: All right, step down.

4 Any other questions? That's it, gang.

5 MR. WHITE: That's it, thank you.

6 (The witness was excused eyetooth

7 THE COURT: Bring in the next  
8 witness. If you would step into the witness  
9 stand and remain standing and raise your  
10 right hand I would appreciate it. Do you  
11 solemnly swear or affirm the testimony you  
12 are about to give is the truth, the whole  
13 truth, and nothing but the truth?

14 SUMNER: I do.

15 THE COURT: State your name -- be  
16 seated please. State your name for the  
17 record.

18 MR. SUMNER: Paul Sumner, S-u-m-n-e-r.

19 THE COURT: Proceed Mr. Prosecutor.

20 ^CSERGEANT PAUL SUMNER

21 Called by the Prosecution eyetooth, sworn by  
22 the Court and testified.

23 ^CDIRECT EXAMINATION

24 BY MR. SKRZYNSKI:

25 Q What is your occupation, sir?

1 A Currently a Police Sergeant for Northville  
2 Township Police in Wayne County.

3 Q Okay. How were you employed in March of  
4 1998?

5 MR. WHITE: Your Honor, I guess we  
6 should deal with these evidentiary issues now.

7 THE COURT: I don't want to  
8 anticipate, let's just see where he is going.

9 MR. WHITE: All right, thank you.

10 THE COURT: Make your objection and  
11 I'll deal with it.

12 BY MR. SKRZYNSKI:

13 Q How were you employed?

14 A In 1998 I was a Police Detective for  
15 Northville Township Police Department.

16 Q Okay. On March the 2nd of 1998, did you have  
17 contact with a person by the name of Steven  
18 McBurney?

19 A Yes, I did.

20 Q Is that person in the courtroom today?

21 A Yes, I did, he is seated next to the Defense  
22 and he is wearing an orange smock.

23 MR. SKRZYNSKI: Would the record indicate  
24 the witness has identified the Defendant?

25 THE COURT: So reflect.



1 MR. SKRZYNSKI: Thank you.

2 BY MR. SKRZYNSKI:

3 Q How did you have contact with him on that  
4 date; why did you have contact with him on  
5 that date?

6 A I was contacted by Protective Services  
7 regarding a child abuse investigation that  
8 they had began in regard -- and Mr. McBurney  
9 was the father of the child, Nicholas Kennedy  
10 --

11 Q Okay.

12 A -- who was currently hospitalized with  
13 injuries.

14 MR. WHITE: Objection. Objection,  
15 this goes to hearsay. There is no way that  
16 he would know this, Judge, other than what he  
17 was told.

18 MR. SKRZYNSKI: Well, I think that -- I  
19 am not offering it for the truth of the  
20 matter, I am offering it to tell why he was  
21 doing what he was doing.

22 THE COURT: It denotes the relevance.

23 MR. SKRZYNSKI: Because he -- it has to be  
24 explained why he goes and talks to Mr.  
25 McBurney.

1 THE COURT: Objection sustained, it  
2 doesn't help me get anywhere on this exam.

3 MR. WHITE: And again, I'll tell you  
4 that this has nothing to do with our case.

5 THE COURT: Counsel, one moment at a  
6 time.

7 MR. WHITE: Okay.

8 THE COURT: That's the way these  
9 things work.

10 MR. WHITE: Thank you.

11 BY MR. SKRZYNSKI:

12 Q Did you have contact with Mr. McBurney on  
13 that date?

14 A Yes sir, I did.

15 Q About what time?

16 A It was approximately three-thirty on that date  
17 at his residence.

18 Q Okay. And -- at his residence, and where was  
19 that?

20 A It was in North Ridge Apartment complex.

21 Q Okay. And what were you interviewing him  
22 about?

23 A I was interviewing Mr. McBurney regarding a  
24 child abuse investigation that I was looking  
25 into, injuries from his son.

1 Q Nicholas Kennedy?

2 A Yes, sir.

3 Q Okay. What did you ask him?

4 A I asked him --

5 MR. WHITE: Objection as to relevance  
6 to this case, Judge.

7 MR. SKRZYNSKI: The reason I am offering  
8 this witness is to demonstrate knowledge by a  
9 prior act under the 768.27.B. The Statute  
10 states that except as provided in sub-section  
11 four in a criminal action in which the  
12 Defendant is accused of an offense involving  
13 domestic violence, evidence of the  
14 Defendant's commission of other acts of  
15 domestic violence is admissible for any  
16 purpose for which it is relevant if it is not  
17 otherwise excluded under Michigan Rule of  
18 Evidence 403; 403 is the balancing test  
19 weighing probative value against unfair  
20 prejudice.

21 Domestic Violence is defined in Section  
22 5A as offense involving domestic violence.  
23 It means an occurrence of one or more of the  
24 following: Causing or Attempting to Cause  
25 Physical or Mental Harm to a Family or

1 Household Member. And Family or Household  
2 Member means any of the following: An  
3 individual with whom the Defendant -- the  
4 person resides or has resided.

5 The Statute allows me to get evidence in  
6 about his prior acts of domestic violence  
7 when they involve an act as defined in the  
8 Statute against a person as defined in the  
9 Statute. Nicholas Kennedy was his son, and  
10 this is testimony regarding an act of  
11 violence against Nicholas Kennedy, which  
12 resulted in the hospitalization of Nicholas  
13 Kennedy, severe brain injuries to Nicholas  
14 Kennedy, the charging of the Defendant and  
15 the Plea of the Defendant to Second Degree  
16 Child Abuse in Wayne County in 1998.

17 The reason for this is to show that he  
18 had knowledge that the kind of treatment  
19 that he treated his own son; daughter to --  
20 Heather -- I'm sorry, Madison McBurney in  
21 2006 he did knowing that it would cause  
22 severe injury to her, because he had done it  
23 to Nicholas Kennedy eight years before.

24 This goes to his knowledge, and  
25 knowledge is one of the elements of this

1 offense of First Degree Child Abuse and of  
2 First Degree Felony Murder.

3 THE COURT: Response?

4 MR. WHITE: Your Honor, the Court  
5 Rule, Michigan Rule of Evidence allows that  
6 to --

7 THE COURT: This is also a new  
8 Statute from what I hear you saying.

9 MR. WHITE: -- Statute, and the  
10 Statute also. The Court Rule, the Michigan  
11 Rule of Evidence says it cannot be offered  
12 to prove that the Defendant acted in  
13 conformity therewith. It can be offered for  
14 proof of motive, opportunity, intent,  
15 preparation, plan or system, scheme of doing  
16 things. There is but one reason that this is  
17 being offered at this point. That is to  
18 prove that -- and not that we have any proof  
19 whatsoever the level and extent of injuries  
20 to the prior child. We have nothing; this  
21 record is absolutely absent.

22 THE COURT: It might as well be if I  
23 don't allow the testimony.

24 MR. SKRZYNSKI: There might, but --

25 MR. WHITE: Sure. Sure.

1 MR. SKRZYNSKI: -- I haven't offered it  
2 yet.

3 MR. WHITE: We're putting the cart  
4 before the horse. They're only -- the only  
5 reason that it's being offered by the People  
6 is to prove -- suggest to this Court because  
7 of a prior act that he acted in conformity  
8 therewith. First of all, the Court Rule I  
9 think speaks to trial and a notice of  
10 intent, and in response to a defense. This  
11 is preliminary examination, all matters are a  
12 little --

13 THE COURT: Well, I love it when the  
14 Prosecutor throws it at me, too. I don't  
15 pay any attention to that argument, I never  
16 have. It has frustrated the Prosecutor's  
17 office on more than one occasion. Don't  
18 expect me to start paying attention to it on  
19 behalf of the Defense.

20 Counsel, if I bought that particular  
21 argument and it were the only way the  
22 Prosecution could prove their case, and they  
23 could prove it at trial, but I didn't allow  
24 it at exam, that would seem to me contrary  
25 to the intent of the legislature in terms of

1 setting up the preliminary exam system. I  
2 can't believe that they would want it to  
3 occur that way.

4 MR. WHITE: Well, that's a different  
5 threshold.

6 THE COURT: When the Prosecutor makes  
7 that argument I don't believe it, when the  
8 Defense makes that argument I don't believe  
9 it. Mainly this helps you guys rather than  
10 them.

11 MR. WHITE: Sure, but this is a  
12 probable cause hearing, Judge.

13 THE COURT: I understand that, and  
14 therefore that argument doesn't fly with me.  
15 I am interested in his argument about your  
16 404.B, though, if you want to expand on that.

17 MR. WHITE: Judge, first of all,  
18 there is nothing at issue, except for  
19 everything because this is a preliminary  
20 examination. We have offered no testimony,  
21 we have offered no -- no evidence  
22 whatsoever. So --

23 THE COURT: Well, let's focus in on  
24 your argument that this doesn't meet the  
25 technical nature of 404.B in terms of the

1 proof and then I'll hear from you on that.

2 And then you need to respond to his argument  
3 under the new State Statute with regard to  
4 domestic violence.

5 MR. WHITE: Well, domestic violence I  
6 think Your Honor --

7 THE COURT: The definition  
8 encompasses the charge.

9 MR. SKRZYNSKI: Sure. Sure it does.

10 THE COURT: But, I don't want to  
11 distract you. I am interested in your 404.B  
12 argument.

13 MR. WHITE: And remember there is  
14 always -- there is a weighing also. There is  
15 a weighing probative value versus prejudice.  
16 And evidence of crimes, wrongs, acts, not  
17 admissible to prove the character or person  
18 in order to show an action in conformity  
19 therewith. We know, Judge, that the  
20 conviction in and of itself is not admissible  
21 under 609. He would have to testify,  
22 correct? He is not testifying at preliminary  
23 examination, nor even if he did testify  
24 would there be -- it wouldn't be admissible.

25 THE COURT: That's not the issue in



1 front of me. What the issue in front of me  
2 is, and I heard you say this, and I don't  
3 know that I agree with you, but at least as  
4 an argument that somehow the reason he is  
5 offering it here is not in conformance with  
6 404.B.

7 MR. WHITE: Judge, at this point,  
8 there is only one reason it could be offered.  
9 To show -- to tell you, to offer as proof  
10 that Steven McBurney acted in conformity in  
11 this case before you as he did in a prior  
12 case, that is his suggestion. There is  
13 nothing else -- there is no other reason that  
14 the People could offer it at this time.  
15 There is no -- they are not responding to  
16 any defense, they are not responding to any  
17 evidence, they are not responding to  
18 anything. They are saying, we offer this to  
19 show you because he did before, he did again.

20 THE COURT: Mr. Prosecutor, I am  
21 going to want you to respond on the 404.B,  
22 but I also want Counsel -- for you to have  
23 an opportunity to talk about the new  
24 Statute. That seems to allow just about  
25 anything in so long as it is related to

1 domestic violence.

2 MR. SKRZYNSKI: As far as 404.B is  
3 concerned, evidence of other crimes or wrongs  
4 is not admissible to prove the character of  
5 somebody to show that the act in conformity.  
6 However, it may be used to show other  
7 things. Included in those other things  
8 under 404.B is the word "knowledge". You can  
9 use a prior bad act to show knowledge.

10 One of the elements of the crime of First  
11 Degree Child Abuse upon which the Felony  
12 Murder is predicated, is that the Defendant  
13 must have knowingly or intentionally caused  
14 serious physical harm to the victim;  
15 knowingly.

16 Now, "knowingly" means that he knew that  
17 when he -- when he performed this act he was  
18 going to cause serious injury. How can I  
19 prove that he knew that what he did was  
20 going to cause serious injury? Because he  
21 has done it before, and he knows what  
22 happens when you treat a child with that kind  
23 of force. He did it before in 1998, and  
24 that's what this Detective is here to testify  
25 about. So, it's a permissible purpose. It's

1 not just to show that he is a bad guy, he  
2 did it once, he probably did it again. It's  
3 to show that he has the knowledge that is  
4 required by the elements. And there is no  
5 other way to show that. He didn't say, "I  
6 knew that when I threw the baby in the crib  
7 that -- and the baby banged his head that  
8 that was going to cause serious injury, and  
9 then I did it", but that is implied from the  
10 fact that he has done this before, and he  
11 has caused serious injury to a child with the  
12 kind of treatment that he gave the child.

13 And as a result of that, that act of  
14 domestic violence, that that child was his  
15 offspring, as a result of that act of  
16 domestic violence he has got the knowledge  
17 that is required in order to prove -- in  
18 order to show that his action is First Degree  
19 Child Abuse. And in the commission of First  
20 Degree Child Abuse he killed the baby, and  
21 that's Felony Murder.

22 So, that's the purpose, it's a proper  
23 purpose for which I am offering it. Not  
24 just to show that if he did it once he  
25 probably did it again.

1 MR. WHITE: First of all, Judge, the  
2 injuries -- I will make an Offer of Proof;  
3 injuries to Nicholas Kennedy, again not in  
4 this record, are different than Madison  
5 McBurney. Injuries to Nicholas Kennedy  
6 resulted in hospitalization and total and  
7 complete recovery. I make an offer of proof.

8 THE COURT: That may be.

9 MR. WHITE: I can offer a proof that  
10 there was no finding adjudication or  
11 admission of First Degree Child Abuse in the  
12 previous case. There was no adjudication  
13 either by admission or trial that Mr.  
14 McBurney knowingly or intentionally caused  
15 serious physical, or serious mental harm to  
16 a child; it didn't happen.

17 You have nothing before this Court,  
18 other than a Police Officer's recitation,  
19 albeit inaccurate, in our opinion, about what  
20 was stated by Steven McBurney. You don't  
21 have a cause of death, you don't have any of  
22 Madison McBurney, you don't have anything  
23 related to her injuries. So, how are you  
24 supposed to make a determination whether this  
25 is prior similar acts for any reason where we

1 don't know the nature and extent of either  
2 child's injuries that are on this record?

3 THE COURT: All right. You want to  
4 talk about --

5 MR. SKRZYNSKI: Can I respond to that,  
6 Judge?

7 THE COURT: Just a minute, Mr.  
8 Prosecutor. You want to talk about the new  
9 Statute?

10 MR. WHITE: The Statute regarding  
11 domestic violence, Your Honor?

12 THE COURT: Which basically allows  
13 anything.

14 MR. WHITE: To the extent that --

15 THE COURT: And I have some serious  
16 questions about its --

17 MR. WHITE: Constitutionality.

18 THE COURT: Well, it hasn't been -- it  
19 hasn't been attacked constitutionally  
20 anywhere I am aware of.

21 MR. WHITE: To the extent that  
22 Statute would allow in any evidence of any  
23 kind against anybody charged with domestic  
24 violence or anything where there is an  
25 allegation that one had committed an act of

1 violence against a family member, and I  
2 believe that that Statute is over-broad and  
3 violates our right to confrontation. And I  
4 don't believe in this case that you could  
5 actually in any way, other than rule that  
6 there is no unfair prejudice in any way by  
7 any act that somehow he was tardy for school  
8 in high school or he may have pushed another  
9 kid in Junior High, and this is probative of  
10 whether he committed First Degree Child Abuse  
11 and --

12 THE COURT: Well, there is a time  
13 limitation on that Statute unless the Court  
14 chooses to go beyond that.

15 MR. WHITE: Right. But, still I mean  
16 you could take any possible act under that  
17 Statute of alleged anti-social aggressive  
18 behavior and put it in as a prior act.

19 THE COURT: No, there are limitations  
20 to that. Those acts have to be in a family  
21 or relationship circumstance as defined by  
22 the Domestic Violence Statute. All right,  
23 thank you.

24 Gentlemen, Mr. Prosecutor, let me ask  
25 you a question, because it relates to the

1 404.B discussion. As I understand it, you  
2 are proffering this for what reason?

3 MR. SKRZYNSKI: To show that he had  
4 knowledge of what -- that what he was doing  
5 was going to cause --

6 THE COURT: An absence of mistake?

7 MR. SKRZYNSKI: Not necess -- well it  
8 could be that, too. But, it's his knowledge,  
9 which is one of the elements, and it's also  
10 under 404.B. I mean, knowledge is  
11 specifically cited as one of the --

12 THE COURT: I understand what 404.B  
13 says. All right, let me -- in looking at  
14 People versus M-a-r-t-z-k-e  
15 251.Mich.Appeals.282, clearly 404.B is  
16 allowed depending on the People's theory.  
17 And the record in front of the Court -- and  
18 while I think Counsel has a point about the  
19 Court Rule requirements at trial, which will  
20 ultimately require that the People provide  
21 some further notice to them, I can't think  
22 for a moment that the Court, when it adopted  
23 these rules, meant it to exclude that such  
24 testimony from preliminary examination. And,  
25 in fact, I would think that this whole

1 proceeding would be to the Defense's  
2 advantage if this is bound over, in that they  
3 would have a fuller sense of what the People  
4 were trying to establish with similar acts.  
5 I am going to note Defense's objection to  
6 that, but, I am going to allow it on that  
7 basis.

8 Then I want to come to the question of  
9 404.B itself. As I say, the case that I  
10 have just cited says that the Court needs to  
11 have some sense of the theory. Clearly,  
12 discern the theory of events by both Defense  
13 and the Prosecution when it comes to the  
14 question of 404.B. The Prosecution is  
15 arguing that under the Rule as cited that  
16 they are going to proffer this testimony to  
17 show knowledge and I think there is a fair  
18 question of absence of mistake.

19 I specifically ask that question to the  
20 Prosecution because if they are proffering  
21 this to show that in each occasion the  
22 Defendant engaged in actions that resulted in  
23 injury to his child, it does seem to me to  
24 be relevant that this would be something he  
25 would be aware of based on prior acts and



1 that this would tend to show that whatever  
2 occurred with this child in light of what I  
3 heard in the earlier testimony was not a  
4 mistake.

5 Therefore, I think 404.B in this  
6 circumstances applies. It is certainly the  
7 ruling of this Court that in this  
8 circumstance as to this proceeding it would  
9 be allowed for that purposes.

10 More, while I think there is going to be  
11 a lot of litigation about the new Domestic  
12 Violence Statute, the two times that that  
13 Statute has already come up in this  
14 courtroom, both seem to be -- provide  
15 direction to this Court that it should allow  
16 in certain types of testimony. I don't  
17 think that in either case the statute itself  
18 as applied to the evidence that is being  
19 proffered would be vague or outside  
20 constitutional mandates.

21 I have a real concern, frankly, about  
22 what a jury is going to do with some of this  
23 evidence in terms of its' prejudicial nature.  
24 But, I don't really think that that is an  
25 issue that is in front of me. I am a

1 District Judge doing a preliminary  
2 examination, and the prejudice to a jury I  
3 think is different than the more outward look  
4 at my viewing of the evidence as  
5 significantly different than how a jury might  
6 be affected by evidence.

7 Now, I say that because in the last case  
8 I am relatively satisfied that that evidence  
9 was extremely emotionally powerful. I don't  
10 know what this evidence would be. I have  
11 that concern, but I don't think it is one  
12 that is appropriate for me to address. That  
13 is one that the Circuit Court will have to  
14 address, or the Court of Appeals in the  
15 event that such cases result in convictions  
16 and they need to sort out the Statute. I  
17 think it's admissible under either theory, I  
18 am going to allow the evidence.

19 MR. WHITE: Thank you.

20 THE COURT: Holding forth that I am  
21 only ruling on those -- on the theory that  
22 it is being proffered and that I think that  
23 the only evidence that is being proffered is  
24 the statement by the Defendant. If there is  
25 other evidence or other testimony that is

1 hearsay in nature, that, it seems to be is a  
2 different analysis and I have not reached the  
3 confrontation question that the Supreme Court  
4 has set up forth in its' rulings now and in  
5 proffered Hammond and Davis to which I  
6 understand could come up in this proceeding.  
7 And if it does we will need to look at  
8 separately. Proceed Mr. Prosecutor.

9 MR. SKRZYNSKI: Thank you.

10 BY MR. SKRZYNSKI:

11 Q So, you went to his place of abode and you  
12 talked to him?

13 A Yes, sir.

14 Q Where were you talking to him?

15 A Initially made contact at the front door,  
16 asked to come into the residence; was allowed  
17 in. I had a uniformed officer that drove  
18 separately, but met me there at the location  
19 as well. Subsequently sat down at the  
20 kitchen table and started speaking with Mr.  
21 McBurney.

22 Q Okay. And what did you ask him and what did  
23 he say?

24 A Went over the injuries of the child,  
25 Nicholas, his four month old child at the

1 time, and spoke regarding who was watching  
2 the child at the time. Confirmed that he  
3 was the one that actually called for the  
4 rescue for the child not breathing at the  
5 time. And then I determined that in  
6 speaking with Mr. McBurney that Mr.  
7 McBurney, Krista Kennedy, which was the  
8 mother of Nicholas Kennedy, and then Linda  
9 Kennedy which is the mother of Krista, were  
10 the care-givers for the child.

11 Q The Defendant told you this?

12 A Yes, he did.

13 Q Okay. What else did he say?

14 A Subsequently, in the conversation I asked him  
15 if he had injured the child in any way, or if  
16 he knew any plausible reason why the child was  
17 injured. Mr. McBurney explained to me that  
18 he knew of no plausible injury, and then  
19 went into a --

20 Q No plausible reason?

21 A No plausible reason, excuse me.

22 MR. WHITE: Objection. I would ask  
23 that, with all due respect, let's let the  
24 witness testify and not lead him.

25 THE COURT: With all due respect I

1 think he has got a point. Go ahead.

2 BY MR. SKRZYNSKI:

3 Q Go ahead.

4 A I asked Mr. McBurney if he knew -- if he  
5 knew of a reason why the child was injured.  
6 Mr. McBurney explained to me that he had no  
7 reason why the child was injured. He then  
8 explained to me -- I asked him if there was  
9 any falls or anything that took place of that  
10 nature inside of the residence that he knew  
11 of. He says that at one time he was  
12 stepping over a child's gate with Nicholas in  
13 his arms and that he tripped over the child  
14 gate and that he fell, but that Nicholas  
15 never hit the ground.

16 Subsequently, I had Mr. McBurney write a  
17 written statement. I then was engaging him  
18 in a conversation about wanting to take a  
19 look through the house. And I then noticed  
20 after speaking with him several times about  
21 the scarring across his knuckles and his  
22 forehead. I asked Mr. McBurney how he  
23 obtained this scarring and Mr. McBurney said  
24 that when he was younger he had an anger  
25 issue and that he had been in several fights

1 and that he obtained the scarring on his  
2 forehead from, I believe, it was a bottle,  
3 and the scarring on his hands from being in  
4 a fight and then hitting a window, if I  
5 remember correctly.

6 Subsequently, I asked to look through the  
7 residence to see where Nicholas spent his  
8 time or where Nicholas' room was. I went  
9 into the room, the room itself and the  
10 child's belongings were in good order.  
11 Everything -- the room looked in -- without  
12 exception to on the way back out I noticed  
13 that there was a bathroom window with a --  
14 or excuse me, a bathroom door with a large  
15 hole in the center of it. I then asked Mr.  
16 McBurney how the hole was placed in the  
17 door. Mr. McBurney explained to me that  
18 that was -- he became angry when he was  
19 locked out of the bathroom and that he  
20 punched the door.

21 I explained to Mr. McBurney that I would  
22 be in touch with him in several days, and  
23 that this was the beginning of an  
24 investigation and that we would be in  
25 contact. I left my business card, and then

1 I left the residence and went back to my  
2 station.

3 Q Now, that contact with him was made at about  
4 what time?

5 A Approximately three-thirty, four o'clock.

6 Q Okay. Now, that same day at a later hour,  
7 did you have any further contact with Mr.  
8 McBurney?

9 A Yes sir, I did.

10 Q Do you know what time?

11 A I believe Mr. McBurney called the station  
12 asking for me, and subsequently he came to  
13 the station and I interviewed him  
14 seven-thirtyish that evening.

15 Q Okay. What happened then?

16 A Mr. McBurney came to the station and he had  
17 explained to me on the phone that he wanted  
18 to come in and tell me what happened. So,  
19 he came in the station and we sat down in  
20 one of the offices. We didn't have any  
21 interview rooms at that time in our Police  
22 Department.

23 He said that when Nicholas was about a  
24 month and a half old that he had Nicholas on  
25 his lap and that Nicholas fell from

1 approximately two or three feet and Nicholas  
2 struck the back of his head on their carpeted  
3 cement floor. He didn't notice Nicholas'  
4 head had swollen the next day and that he  
5 didn't notify anyone of that.

6 Q What else happened?

7 A The interview continued and Mr. McBurney  
8 started to cry.

9 Q What happened then?

10 A At that point, I asked him was there  
11 something else he needed to tell me about --  
12 was there something else that happened to  
13 Nicholas and that we needed to get this  
14 information to the doctors?

15 Q And what did he say?

16 A He told me that on the 27th he arrived home  
17 from his midnight shift at about six-thirty  
18 a.m.

19 Q The 27th of which month?

20 A February 27th.

21 Q Okay. Of 1998?

22 A Yes, sir.

23 Q Okay. At six-thirty he arrived home you  
24 said?

25 A It was approximately six-thirty a.m. after



1 working a midnight shift.

2 Q Okay.

3 A His girlfriend, Krista Kennedy, handed  
4 Nicholas off to Mr. McBurney when she left  
5 for work at approximately seven a.m.

6 Q What happened then?

7 A Nicholas was fussing and crying, so Mr.  
8 McBurney attempted to give him a bottle.  
9 Mr. McBurney said that Nicholas continued to  
10 fuss and cry and he became very frustrated,  
11 and began shaking the child.

12 Q What else happened; what else did he say?

13 A While he was shaking the child, the child  
14 went limp; what he believed stopped breathing  
15 and subsequently he called for emergency or  
16 the 911.

17 Q Go ahead, what else?

18 A I asked Mr. McBurney if he felt that shaking  
19 Nicholas was too hard, and he explained to me  
20 that shaking Nicholas was harder than Krista  
21 did it and that he felt that his actions  
22 caused the injury to Nicholas. He  
23 subsequently wrote a secondary written  
24 statement and referred to those comments in  
25 his own written form.

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1 Q Did you seek a warrant from the Prosecutor,  
2 the Wayne County Prosecutor based on this  
3 statement?

4 A Yes. Mr. McBurney left that night and then I  
5 submitted the warrants several days later for  
6 a warrant review from the Wayne County  
7 Prosecutor's Office.

8 Q And did you obtain a warrant?

9 A Obtained a warrant for Child Abuse in the  
10 First Degree.

11 MR. WHITE: Objection, that's not  
12 relevant Your Honor.

13 THE COURT: What's the relevance?

14 MR. SKRZYNSKI: Well, he was -- I am  
15 going to put in the Certified Copy of the  
16 Conviction of Mr. McBurney for Second Degree  
17 Child Abuse. And I wanted to establish  
18 through the Detective that he is the one that  
19 sought the charges. That there was a charge  
20 issued that it was First Degree in order to  
21 explain when I offered the Certified Copy of  
22 the Conviction for Second Degree; explain how  
23 that comes to be.

24 THE COURT: What's the relevance of  
25 that?

1 MR. SKRZYNSKI: To demonstrate that he  
2 did, in fact, do this.

3 MR. WHITE: Whether this officer  
4 sought a warrant for First Degree or Second  
5 Degree, whatever, I think it's irrelevant.

6 THE COURT: Yeah, I don't see how  
7 that gets us anywhere. Sustained.

8 MR. SKRZYNSKI: I have no further  
9 questions.

10 THE COURT: Cross?

11 ^CCROSS-EXAMINATION

12 BY MR. WHITE:

13 Q Detective Sumner?

14 A Yes, sir.

15 Q I note that I have been provided with a full  
16 copy of your report today. And that copy  
17 contains page three, that -- when did you get  
18 this copy?

19 A May I see the copy?

20 Q Sure.

21 MR. WHITE: If I may approach the  
22 witness, Your Honor?

23 THE COURT: You may.

24 THE WITNESS: This is my written report  
25 that I began in 1998.

1 BY MR. WHITE:

2 Q Okay. Where did you get that report; written  
3 report?

4 A This report I pulled off my department  
5 computer that I keep my documents on.

6 Q Your own computer?

7 A It's a department issued computer that I -- no  
8 one has access to.

9 Q Okay. Did your -- are the rest of the  
10 reports kept in another computer?

11 A Yes. Regarding when a report is finished,  
12 like the investigator's portion, those  
13 reports are turned over to records. This is  
14 a 1998 case. I couldn't keep all of my  
15 cases and files open, I turn them in over to  
16 the Records Bureau. They subsequently -- at  
17 that time they used what is called a  
18 canti-file system, they scan them in and then  
19 they discard the hard copy.

20 Q And so you knew you were subpoenaed to come  
21 here to testify today?

22 A Yes.

23 Q You needed to refresh your recollection?

24 A Yes, sir.

25 Q Okay. And you needed your full report in

1 order to do so?

2 A I -- yes.

3 Q Okay. And that full report is that which I  
4 approached to you, correct?

5 A Right. That report and the report you are  
6 referring to that where page three is missing.

7 Q Yes.

8 A Yes, and all the other supplements were  
9 written throughout this.

10 Q Throughout the case, but it's prior to the  
11 interview that you did with Steven McBurney on  
12 March 2nd?

13 A Two interviews; yes sir.

14 Q Two interviews, one in his apartment and one  
15 at the Department, those are accurately  
16 reflected in the report that you have in  
17 front of you?

18 A Correct.

19 Q Okay. If I approach?

20 A Yes, sir.

21 MR. WHITE: Thank you, Your Honor.

22 THE COURT: You may.

23 BY MR. WHITE:

24 Q And then now here we are almost nine years,  
25 in fact, in excess to nine years later, the

1 report, is it accurate?

2 A Yes, sir.

3 Q Do you have independent recollection of these  
4 two interviews?

5 A There might be portions, I would have to  
6 look at that document, but I have read it  
7 several times.

8 Q Okay. And you testified also in 1998, both  
9 in the Abuse and Neglect Jury Trial in front  
10 of Judge Pitts, correct?

11 A I believe that Mr. McBurney under Plea  
12 Agreement by the Second Degree. I don't  
13 believe I testified at the criminal trial in  
14 this matter.

15 Q My question though is, do you recall  
16 testifying before Judge Pitts at the Lincoln  
17 Hall of Justice in the Abuse and Neglect case  
18 and the Jury Trial?

19 A In the -- you will have to assist me here,  
20 Counsel, in the child termination trial?

21 Q Correct.

22 A Yes, I did testify during that trial.

23 Q And you testified also at the preliminary  
24 examination, correct?

25 A At 35th District Court, correct.

1 Q Now, your testimony today, Officer, you have  
2 added some things beyond your report about the  
3 scarring and the reasons for the scarring on  
4 Mr. McBurney's hands and head. You said  
5 there was a problem and there was a fight  
6 incident. That's not referenced in your  
7 report, is it?

8 A No, but I believe we spoke about those  
9 during the child termination trial.

10 Q So, you are having independent recollection of  
11 this interview nine years ago?

12 A Yes, and subsequent during the trial as well.  
13 It was a four day trial.

14 Q Okay. And --

15 MR. SKRZYNSKI: Well, Judge -- Judge,  
16 before we go on I just want to object,  
17 because if he is trying to impeach this  
18 witness based on what is in the report, those  
19 facts regarding the scarring on his hands,  
20 arms and forehead, are all in that report.  
21 They are on page two of that report. So, if  
22 --

23 THE COURT: So, essentially what  
24 you're trying to say is, is that if he goes  
25 too far on an issue you intend to walk

1 through the door he is opening?

2 MR. SKRZYNSKI: Right.

3 THE COURT: Approach the bench.

4 MR. WHITE: Now, that wasn't the  
5 nature of my question, Judge.

6 THE COURT: Approach the bench.

7 (Bench conference held eyetooth

8 THE COURT: Go ahead, Counsel.

9 BY MR. WHITE:

10 Q Also, Detective, the use of the word  
11 "shaking", are you absolutely sure that when  
12 Steven McBurney came in to the apartment at  
13 seven-thirty on that day and you sat down  
14 and talked to him that he used the word  
15 "shaking"?

16 A Yes sir, I am.

17 Q And didn't, in fact, he used the word  
18 bouncing Nicholas on his hip?

19 A I believe that word was used also, but he was  
20 bouncing -- and he told me that he got very  
21 frustrating and he was shaking the child.

22 Q And you had Mr. McBurney prepare a written  
23 statement twice, correct?

24 A Yes, sir.

25 MR. WHITE: Okay. Nothing further,



1 Judge.

2 THE COURT: Redirect?

3 MR. SKRZYNSKI: Nothing further, thank  
4 you.

5 THE COURT: You can step down, thank  
6 you.

7 (The witness was excused)

8 MR. SKRZYNSKI: May this witness be  
9 excused?

10 THE COURT: He is. Approach.

11 THE WITNESS: Thank you.

12 THE COURT: Have a good day.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Enjoy Wayne County when  
15 you get back to it.

16 THE WITNESS: A few more years.

17 (Bench conference held eyetooth

18 THE COURT: Let's go back on the  
19 record. Okay, I understand the situation as  
20 is follows: There are two remaining issues.  
21 There is the proffer that the Prosecution  
22 intends to make about hospital record  
23 regarding this prior act that we have heard  
24 testimony on. The Court, under our old law,  
25 I don't think there would be an issue. But,

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1 I do think that there may be a  
2 Crawford/Davis/Hammond issue raising now.

3 I recognize quite clearly that the  
4 Supreme Court has not spoken to this issue in  
5 Hammond about the admissibility of this  
6 document, and I think it is directly related  
7 to the reasoning there. And, Counsel, you  
8 need to be prepared to make an appropriate  
9 and intelligent objection if you are going  
10 to. If you're not, it would be nice if you  
11 would tell everybody and we wouldn't have to  
12 do all of the research. I think this is a  
13 gray area. I would like to know what your  
14 thoughts are on both sides.

15 Second, I understand that the good  
16 doctor will be testifying on this date and  
17 that he is the only other witness that the  
18 Prosecution intends to proffer, and that we  
19 have already picked out another half-day for  
20 this in May. I don't have the date  
21 off-hand, but I understand my staff has  
22 cleared that.

23 I would point out that the Court, as I  
24 did at the bench conference, the Court has  
25 one-third of 60, well 57,000 cases to be

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1 entirely accurate, and finding a half-day or  
2 a day is a difficult thing to do. I think  
3 this case has gone on long enough, and I  
4 would like it to finish as quickly as  
5 possible. Since I have got the good doctor  
6 in here I would hope that we could do it in  
7 that time frame, because if we cannot, and I  
8 am willing to go late, this will only mean  
9 that the Defendant sits in jail awaiting  
10 trial for a longer period of time, which is  
11 not my goal.

12 I think this has been long enough. And  
13 I don't even like the fact that I booked a  
14 day for this today, and all of a sudden I  
15 had a witness not being able to appear when  
16 this has been sitting for a long time. It's  
17 not anybody's fault, I am not being  
18 critical. I am simply noting that I don't  
19 like it, and I am going to finish this so  
20 that it gets to the next stage, if it gets  
21 to the next stage. All right, thank you all.

22 MR. WHITE: Thank you, Judge.

23 MR. SKRZYNSKI: Thank you, Judge.

24 THE COURT: This matter is adjourned.

25 (The preliminary exam was adjourned)

STATE OF MICHIGAN)

) SS:

COUNTY OF OAKLAND)

I, Christine E. Ebel, CER-5827, do hereby  
certify that I transcribed the foregoing Preliminary  
Examination, Volume I, recorded by Paul Ward, held April  
27, 2007, before the HONORABLE BRIAN W. MACKENZIE, Judge  
of the 52nd/1st District Court, located at 48150 Grand  
River Avenue, Novi, Michigan, 48374, and that this is a  
complete, true, and correct transcript of the electronic  
recordings.



CHRISTINE E. EBEL, CER-5827

DATED: June 4, 2007